

Organizer: Covington, Jeryl[Covington.Jeryl@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Attendees: Covington, Jeryl; Rhines, Dale; Khan, Zahra; Johnson, Johahna
Location: Microsoft Teams Meeting
Importance: Normal
Subject: Review Draft IRA: 27R-16-R6
Start Time: Wed 7/29/2020 2:30:00 PM (UTC)
End Time: Wed 7/29/2020 3:30:00 PM (UTC)
Required Attendees: Covington, Jeryl; Rhines, Dale; Khan, Zahra
Optional Attendees: Johnson, Johahna

2020.07.27 REVISED DRAFT Informal Resolution Agreement Complaint No 27R-16-R6 (002) jj.docx

Review CRFLO's comments in draft IRA.

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Organizer: Covington, Jeryl[Covington.Jeryl@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Location: Microsoft Teams Meeting
Importance: Normal
Subject: EPA Complaint No. 27R-16-R6: Discussion of Region 6 Draft Resolution Agreement Comments
Start Time: Wed 8/12/2020 6:00:00 PM (UTC)
End Time: Wed 8/12/2020 6:30:00 PM (UTC)
Required Attendees: Khan, Zahra; Johnson, Johahna; Rhines, Dale; Dorka, Lilian; Frey, Sarah; Barnett, Cheryl; Vaughn, Gloria; Blanco, Arturo; Burrell, Monica; Brown, Jamesr; Nelson, Russell; Ryland, Renea; Moncrieffe, Marcia

2020.07.29 REVISED DRAFT Informal Resolution Agreement Complaint No 27R-16-R6.docxR6comments.docx

Discussion of Region 6 Comments: Draft Resolution Agreement

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Organizer: Covington, Jeryl[Covington.Jeryl@epa.gov]
From: Covington, Jeryl[/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5744ff31964349539994e9eb4c3f90fc-Covington,]
Attendees: Covington, Jeryl; Dorka, Lilian; Khan, Zahra; Johnson, Johahna; Hicks, Basil; mcalister; Moncrieffe, Marcia; Hoang, Anhthu
Location: Microsoft Teams Meeting
Importance: Normal
Subject: EPA Complaint No. 27R-16-R6: Meeting with ADEQ
Start Time: Wed 10/27/2021 2:00:00 PM (UTC)
End Time: Wed 10/27/2021 3:00:00 PM (UTC)
Required Attendees: Covington, Jeryl; Dorka, Lilian; Khan, Zahra; Johnson, Johahna; Hicks, Basil; mcalister
Optional Attendees: Moncrieffe, Marcia; Hoang, Anhthu
[2021.01.08 Final ADEQ Recip Resolution Ltr and IRA 27R-16-R6.pdf](#)
[Informal Resolution Agreement Report.pdf](#)

Rescheduled meeting with ADEQ to discuss the IRA Report and obtain an update on the IRA commitments (Section III. D through M).

Microsoft Teams meeting

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[+1 202-991-0477,,975215006#](#) United States, Washington DC

Phone Conference ID: 975 215 006#

[Find a local number](#) | [Reset PIN](#)

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Organizer: Covington, Jeryl[Covington.Jeryl@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Attendees: Covington, Jeryl; Khan, Zahra; Johnson, Johahna; Rhines, Dale; Dorka, Lilian; Frey, Sarah; Barnett, Cheryl; Vaughn, Gloria; Blanco, Arturo; Burrell, Monica; Brown, Jamesr; Nelson, Russell; Ryland, Renea; Moncrieffe, Marcia; mcalister; Hicks, Basil; Hayes, Mark
Location: Microsoft Teams Meeting
Importance: Normal
Subject: EPA Complaint No. 27R-16-R6: Discussion of Draft Informal Resolution Agreement
Start Time: Thur 12/10/2020 5:00:00 PM (UTC)
End Time: Thur 12/10/2020 6:00:00 PM (UTC)
Required Attendees: Covington, Jeryl; Khan, Zahra; Johnson, Johahna; Rhines, Dale; Dorka, Lilian; Frey, Sarah; Barnett, Cheryl; Vaughn, Gloria; Blanco, Arturo; Burrell, Monica; Brown, Jamesr; Nelson, Russell; Ryland, Renea; Moncrieffe, Marcia; mcalister; Hicks, Basil
Optional Attendees: Hayes, Mark

2020.08.24 REVISED DRAFT IRA Complaint No 27R-16-R6-DEQ edits and comments-20201119.docx

Review of draft informal resolution agreement.

Microsoft Teams meeting

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To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Thur 12/17/2020 12:41:52 AM (UTC)
Subject: 2020.12.16 Revised DRAFT IRA Complaint No 27R-16-R6.docx
2020.12.16 Revised DRAFT IRA Complaint No 27R-16-R6.docx

I attempted accepting/deleting the track changes in the latest version of the draft IRA.

Similar to my past attempts to edit and revise this document, saving this version resulted in an upgrade to the format. I suspect that ADEQ previously worked on an earlier version that committed these edits and thus, prevents the removal of some remaining edits.

Anyway, I am calling it a day, going to bed, and hope that either of you may have better luck than I at this late evening.

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]
Cc: Rhines, Dale[rhines.dale@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Thur 12/17/2020 1:29:34 PM (UTC)
Subject: RE: 2020.12.16 Revised DRAFT IRA Complaint No 27R-16-R6.docx
2020.12.17 Revised DRAFT IRA Complaint No 27R-16-R6.docx

I believe that this version has been corrected.

PLEASE review with clear eyes as mine are glazed over.

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Wednesday, December 16, 2020 7:45 PM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>
Subject: RE: 2020.12.16 Revised DRAFT IRA Complaint No 27R-16-R6.docx

PLEASE go rest! I will take care of this Jeryl. You have done enough. Thanks to you both!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: Covington, Jeryl <Covington.Jeryl@epa.gov>
Sent: Wednesday, December 16, 2020 7:42 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>
Subject: 2020.12.16 Revised DRAFT IRA Complaint No 27R-16-R6.docx

I attempted accepting/deleting the track changes in the latest version of the draft IRA.

Similar to my past attempts to edit and revise this document, saving this version resulted in an upgrade to the format. I suspect that ADEQ previously worked on an earlier version that committed these edits and thus, prevents the removal of some remaining edits.

Anyway, I am calling it a day, going to bed, and hope that either of you may have better luck than I at this late evening.

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Thur 12/17/2020 3:58:05 PM (UTC)
Subject: ADEQ 27R-16-R6: Desk Statement
2020.12 Desk Statement for Resolution of DEQ.docx

I have drafted a desk statement for ADEQ. Please review and use as needed.

I have saved in in the resolution folder: P:\OCR Folders\T6\Title VI Case Library\2016\27R-16-R6 ADEQ Georgia Pacific\8. Resolution\Desk Statement

Jeryl W. Covington
Environmental Protection Specialist
U.S. Environmental Protection Agency
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Mail Code: 2310A
Washington, DC 20460
Desk: (202) 564-7713
Fax: (202) 565-0196
covington.jeryl@epa.gov

To: Randolph, Shay[shay.randolph@adeq.state.ar.us]
Cc: Hicks, Basil[hicks@adeq.state.ar.us]; mcalister[mcalister@adeq.state.ar.us]; Temple, Kurt[Temple.Kurt@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]
From: Dorka, Lilian[o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=af796221e00a4a338cea3c72adbd0d57-Dorka, Lill]
Sent: Wed 8/4/2021 5:40:53 PM (UTC)
Subject: RE: EPA Complaint No. 27R-16-R6, DEQ's Response to EPA's comments on Coffee Creek and Mossy Lake
[Response to EPA Comment on CC and ML.pdf](#)

Thanks Shay and hope our AR colleagues are all doing well. Also adding the rest of our case team here. We will take a look and let you know if we have any questions. Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell
Pronouns: she/her/hers

From: Randolph, Shay <shay.randolph@adeq.state.ar.us>
Sent: Wednesday, August 4, 2021 1:28 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Hicks, Basil <hicks@adeq.state.ar.us>; mcalister <mcalister@adeq.state.ar.us>
Subject: EPA Complaint No. 27R-16-R6, DEQ's Response to EPA's comments on Coffee Creek and Mossy Lake

Good afternoon,

I hope all is well. Pursuant to the Informal Resolution Agreement resolving EPA Complaint No. 27R-16-R6, attached is DEQ's response to comments in compliance with Section III commitment A. Please see the pdf for DEQ's response to EPA's comments on Coffee Creek and Mossy Lake. The response will be included with the final submission of Rule 2 to the Arkansas Pollution Control and Ecology Commission ("Commission").

Best,

Shay Randolph | Special Counsel for Environmental Justice | Title VI Coordinator
Arkansas Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118-5317
501.682.0801 | shay.randolph@adeq.state.ar.us



EPA Comment: Coffee Creek and Mossy Lake The EPA and the ADEQ have discussed concerns related to removal of Gulf Coastal designated uses for Coffee Creek and Mossy Lake that was approved by the EPA in the early 1980s as it relates to the requirements in the federal regulation at 40 CFR 131.10 and 131.20(a). Given the regulatory requirements, in an effort to determine the appropriate uses for Coffee Creek and Mossy Lake, the EPA funded a use attainability analysis (UAA) in 2007 that was developed by Parsons Engineering and the University of Arkansas Ecological Engineering Group to determine if the “no aquatic life use” designation for Coffee Creek and Mossy Lake is appropriate.

The Parsons UAA indicates Coffee Creek and Mossy Lake have the potential to support the state’s Gulf Coastal aquatic life use but that the Georgia-Pacific Crossett discharge effects both habitat and aquatic life in Coffee Creek and Mossy Lake. A subsequent UAA developed by AquAeTer Environmental Engineering in 2013 on behalf of Georgia- Pacific did not refute these findings but recommended the development of a seasonal Gulf Coastal aquatic life use.

The ADEQ appears to have considered the AquAeTer UAA recommendations and likely its own analysis and proposed a seasonal Gulf Coastal ecoregion aquatic life use for portions of Coffee Creek as part of its 2019 triennial revisions as required by 40 CFR 131.10 and 131.20(a). However, the ADEQ’s initial proposed revisions were limited to the addition of a “...seasonal Gulf Coastal ecoregion aquatic life use, but its application was limited to the historic channel of Coffee Creek upstream of Georgia Pacific’s Mossy Lake Treatment Unit from N33.057, W092.055 to N33.094, W092.04 and the remaining upstream portion of the historic channel from N33.112, W092.013 to N33.119, W091.995.” In our October 31, 2019 letter, the EPA provided comments and recommendations regarding this proposed revision, noting that it did not include seasonal uses that would apply to the entirety of Coffee Creek and Mossy Lake or appropriate CWA Sec. 101(a)(2) uses that would apply to these waters during the remainder of the year. These initial comments also referred to the requirements found in the federal regulations.

As part of Arkansas’s water quality standards revisions process, the ADEQ has since provided its proposed revisions to Reg. 2, now Rule 2, to the Governor’s Office for review. Following that review, the ADEQ petitioned the Arkansas Pollution Control and Ecology Commission (Commission) to adopt the revisions proposed by the Water Quality Planning Branch. However, the proposed revisions to Rule 2 that were brought before the Commission during its July 29, 2020 hearing no longer included the previously proposed seasonal use for the portions of Coffee Creek referred to in the ADEQ’s initial proposed revisions and did not include uses consistent with CWA Sec. 101(a)(2) or Rule 2.102 and 2.302 for the Coffee Creek or Mossy Lake. In response, the EPA again recommends that Commission adopt uses consistent with CWA Sec. 101(a)(2) and Arkansas’s own Rule 2.102 for the entirety of Coffee Creek and Mossy Lake and again reiterates the CWA requirements and those in the federal regulations at 40 CFR 131.10 and 40 CFR 131.20(a). See the EPA’s October 2019 comments in **Attachment 4**.

DEQ Response: EPA “recommends that Commission adopt uses consistent with CWA Sec. 101(a)(2) and Arkansas’s own Rule 2.102 for the entirety of Coffee Creek and Mossy Lake” and supports that recommendation by referencing the UAAs from 2008 and 2013.

After reviewing the historical records related to Coffee Creek, DEQ has determined that the “entirety of Coffee Creek” as referenced in Rule 2 clearly refers to that portion of Coffee Creek that is dominated by GP’s effluent. (Arkansas’s 1973 Water Quality Standards.)

The State of Arkansas’s 1973 Water Quality Standards did not define a particular segment of “Coffee Creek.” It simply classified “Coffee Creek” as having no primary contact recreation and fishery designated uses because the flow of Coffee Creek was dominated by GP’s effluent. At that time, the only section of “Coffee Creek” that was dominated by GP’s effluent was Coffee Creek below Mossy Lake.

Around 1970, GP constructed a concrete conveyance to Mossy Lake that separated its effluent from the historic creek bed that existed above Mossy Lake. The 1984 UAA states that “[t]he Mossy Lake/Coffee Creek System has been used as an integral part of the wastewater treatment system of the Georgia-Pacific manufacturing complex in Crossett, Arkansas since the turn of the century.” The 1984 UAA identifies the historic creek bed above Mossy Lake as an “abandoned creek channel along the effluent system.” The 1984 UAA also indicated that the flow of “Coffee Creek,” in the absence of effluent, was intermittent in nature. In EPA’s 1986 permit, Coffee Creek below Mossy Lake is the receiving stream for GP’s effluent.

Based on these facts, DEQ has concluded that the original reference to Coffee Creek in Rule 2 requires further clarification. The confusion about how to describe “Coffee Creek” begins when the 1984 UAA appears to refer to parts of GP’s wastewater treatment system as part of Coffee Creek.¹ EPA’s comments indicate that this confusion has continued even after EPA issued its 1986 permit that authorized a discharge to Coffee Creek below Mossy Lake.

Pursuant to 40 C.F.R. § 120.2, waste treatment systems² are not waters of the United States. Georgia Pacific’s waste treatment system cannot be described as waters of the United States, and DEQ does not have the authority to designate a part of Georgia Pacific’s waste treatment system as waters of the United States.

The “entirety of Coffee Creek” that is both dominated by GP’s effluent and a water of the United States is limited to Coffee Creek below Mossy Lake. Therefore, Coffee Creek below Mossy Lake is the only extent portion of Coffee Creek that is potentially subject to having designated uses under Section 101(a)(2) of the Clean Water Act.

As a point of further clarification, EPA did not approve the removal of any designated uses from Coffee Creek or Mossy Lake in the 1980s because (1) Coffee Creek has not had primary contact

¹ EPA approved the 1984 UAA in 1988.

² Waste Treatment Systems include “all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge)” 40 C.F.R. § 120.2.

recreation and fishery designated uses since 1973, meaning that there were no designated uses to remove,³ and (2) EPA permitted a discharge from Mossy Lake by NPDES permits that EPA issued in 1974, 1986, and 1991, an action that excluded Mossy Lake from the definition of Waters of the United States as defined by 40 C.F.R. § 120.2.⁴ This waste treatment system exclusion is intended to exclude waters that are incorporated in an NPDES permit as part of a treatment system when the discharges from the system meet the requirements of that NPDES permit and the CWA. (*In Re Arizona Public Service Co.*, NPDES Appeal No.19-06 at p.271.) Excluding Mossy Lake from waters of the United States is consistent with the NPDES permits issued to GP by EPA and DEQ. Discharges from Mossy Lake are required to meet water quality based effluent limits, and the discharges from Mossy Lake do meet those limits. EPA's comments and recommendations regarding uses under Section 101(a)(2) of the Clean Water Act that would apply to "Mossy Lake" appear to run counter to 40 C.F.R. § 120.2.

The only remaining segment of Coffee Creek that DEQ is required to evaluate for potential uses under Section 101(a)(2) of the Clean Water Act is Coffee Creek below Mossy Lake. At this time, DEQ does not propose to amend the existing uses for the segment of Coffee Creek from below Mossy Lake to the Ouachita River. The 2008 and 2013 UAAs did not focus on this section, and the changes at GP's facility have made those UAAs irrelevant because they do not reflect current conditions.

The 2008 and 2013 UAAs do not clearly support adding an aquatic life use for that section of Coffee Creek that is independent of its connection to the Ouachita River. Both UAAs acknowledge that conditions in Coffee Creek below Mossy Lake are influenced by the Ouachita River. The 2008 UAA stated that "Coffee Creek below Mossy Lake is likely to sustain a viable and diverse aquatic community within the back waters of the Ouachita River." The 2013 UAA stated that for Coffee Creek below Mossy Lake, "[the sampling site] is directly connected to the Ouachita River and fisheries found here have migrated from the Ouachita River the short distance up to [the sampling site]." As a result, DEQ cannot rely on those UAAs to support a change at this time.

In addition, when the Ouachita River inundates portions of Coffee Creek, the water body remains the Ouachita River because that represents the conditions that occur in a typical year. When the Ouachita River inundates Mossy Lake, the water body remains the Ouachita River and Mossy Lake is temporally unable to function as part of Georgia Pacific's waste treatment system. DEQ will address discharges from Georgia Pacific's waste treatment system to the Ouachita River when it issues the renewal for NPDES Permit No. AR0001210.

Finally, Georgia Pacific closed about half of its operations at the Crossett facility in 2019. This closure has changed the character of the wastewater entering Georgia Pacific's waste treatment

³ Since 1973, the State of Arkansas's Water Quality Standards identify Coffee Creek as a water of the state that does not have primary contact recreation and fishery uses. Since EPA first approved the State of Arkansas's Water Quality Standards, Coffee Creek has not had primary contact recreation and fishery uses. Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, dated March 27, 2020, <https://www.epa.gov/wqs-tech/water-quality-standards-regulations-arkansas#state>

⁴ These EPA-issued permits are on DEQ's PDS under NPDES Permit No. AR0001210

system. As a result, DEQ cannot rely on the old UAAs to establish the conditions in Coffee Creek below Mossy Lake.

DEQ acknowledges that the State of Arkansas's Water Quality Standards do not fully capture this regulatory history or provide a proper description of "Coffee Creek" or "Mossy Lake." The State of Arkansas's Water Quality Standards should be clarified to provide an accurate description of Coffee Creek and Mossy Lake.

In response to EPA's comment, DEQ proposes to make the following changes:

- 1) DEQ proposes to amend Rule 2 by adding a footnote that states "Coffee Creek" for purposes of Rule 2 is defined as Coffee Creek from below Mossy Lake to the Ouachita River.
- 2) DEQ proposes to amend Rule 2 by adding a footnote that states Mossy Lake is excluded from the waters of the United States as defined by 40 C.F.R. § 120.2 because it functions as a component of GP's waste treatment system.

The two segments of "Coffee Creek" above Mossy Lake that are connected by GP's stormwater conveyance are not influenced by GP's wastewater, and, for that reason, those segments have the aquatic life use that is appropriate for similar water bodies in that ecoregion. DEQ proposes to clarify Rule 2 on this point in a future rulemaking if necessary, but DEQ does not propose to add a domestic water supply use to these segments.

Although DEQ is not proposing to amend the existing uses for the segment of Coffee Creek from below Mossy Lake to the Ouachita River, DEQ is committed to working with GP and EPA to develop an appropriate understanding of the conditions in that one half-mile section of Coffee Creek and propose appropriate uses.

To: Hicks, Basil[hicks@adeq.state.ar.us]; Randolph, Shay[shay.randolph@adeq.state.ar.us]
Cc: Khan, Zahra[Khan.Zahra@epa.gov]; mcalister[mcalister@adeq.state.ar.us]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Thur 10/7/2021 1:14:08 PM (UTC)
Subject: RE: EPA Complaint No. 27R-15-R6: Review of IRA Commitment
Informal Resolution Agreement Report.pdf
2021.01.08 Final ADEQ Recip Resolution Ltr and IRA 27R-16-R6.pdf

Meeting Update:

Per the conversation between Michael Mcalister and Lilian Dorka, ECRCO will not be discussing the CWA designations for the water bodies during this meeting. Excluding the update on Section III A, ECRCO will be discussing the IRA Report and conclude with a discussion on commitments Section III. D through M.

Please let ECRCO know if you have any questions.

From: Covington, Jeryl
Sent: Wednesday, October 6, 2021 12:36 PM
To: Hicks, Basil <hicks@adeq.state.ar.us>; Randolph, Shay <shay.randolph@adeq.state.ar.us>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; mcalister <mcalister@adeq.state.ar.us>
Subject: RE: EPA Complaint No. 27R-15-R6: Review of IRA Commitment

Update:

Participants from EPA Region 6 will be requested to join this meeting.

From: Hicks, Basil <hicks@adeq.state.ar.us>
Sent: Tuesday, October 5, 2021 5:30 PM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Randolph, Shay <shay.randolph@adeq.state.ar.us>
Cc: Khan, Zahra <Khan.Zahra@epa.gov>; mcalister <mcalister@adeq.state.ar.us>
Subject: RE: EPA Complaint No. 27R-15-R6: Review of IRA Commitment

Jeryl,

Mike and I have time on Tuesday, October 19 and Wednesday, October 20. Wednesday is more open than Tuesday.

Shay will be out that week.

I will communicate our meeting time to Julie Linck.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us



From: Covington, Jeryl [mailto:Covington.Jeryl@epa.gov]
Sent: Monday, October 4, 2021 10:50 AM
To: Randolph, Shay
Cc: Hicks, Basil; Khan, Zahra
Subject: EPA Complaint No. 27R-15-R6: Review of IRA Commitment

ECRCO would like to meet with ADEQ to discuss the IRA commitments with respect to the attached response.

ECRCO proposes to meet with the following ADEQ staff during the week of October 18, 2021:

Julie Linck, Michael McAlister, Basil Hicks, and Shay Randolph

Please let us know of your availability. Upon receipt of your availability, ECRCO will submit a meeting invitation confirming the date and time.

Jeryl W. Covington
Environmental Protection Specialist
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1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524
Mail Code: 2310A
Washington, DC 20460
Desk: (202) 564-7713
covington.jeryl@epa.gov

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Tue 2/5/2019 3:52:56 PM (UTC)
Subject: FW: R6August7REviewed VersionDraft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6.docx
Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 - 8-16-18.docx

-----Original Message-----

From: Dorka, Lilian
Sent: Friday, August 10, 2018 12:41 PM
To: Gray, David <gray.david@epa.gov>
Cc: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>
Subject: RE: R6August7REviewed VersionDraft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6.docx
Importance: High

Hello David and Marcia,

Attached, please find the clean version of the Agreement ready for sharing with ADEQ. Note that when we took a last look at the clean version, we realized that some of the lettered paragraphs in Section III (ADEQ Commitments) were out order and not grouped with like provisions. For example, the introduction of the proposed community meeting came before the elements of the community discussion. Similarly, NPDES obligations were bisected with CAA obligations throughout.

So, without changing the substance, we reordered the paragraphs so that they follow more logically making it easier for ADEQ to follow. There was also a paragraph on WQS that needed to be lettered and was not. I think this is now ready to go! ☺ Please let me know if you have any questions.

Thanks again for all of your help!

Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649

-----Original Message-----

From: Gray, David
Sent: Tuesday, August 7, 2018 8:05 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>
Subject: R6August7REviewed VersionDraft Informal Resolution between EPA and ADEQ - Complaint No 27R-16-R6.docx

Lilian - our final comments.

From: Covington, Jeryl[/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5744ff31964349539994e9eb4c3f90fc-Covington,]
Attendees: Dorka, Lilian; Khan, Zahra; Johnson, Johahna; Hicks, Basil; mcalister
Location: Microsoft Teams Meeting
Importance: Normal
Subject: EPA Complaint No. 27R-16-R6: Meeting with ADEQ
Start Time: Wed 10/20/2021 2:00:00 PM (UTC)
End Time: Wed 10/20/2021 3:00:00 PM (UTC)
Required Attendees: Dorka, Lilian; Khan, Zahra; Johnson, Johahna; Hicks, Basil; mcalister
[2021.01.08 Final ADEQ Recip Resolution Ltr and IRA 27R-16-R6.pdf](#)
[Informal Resolution Agreement Report.pdf](#)

Meeting with ADEQ to discuss the IRA Report and obtain an update on the IRA commitments (Section III. D through M).

Microsoft Teams meeting

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To: Engelman-Lado, Marianne[EngelmanLado.Marianne@epa.gov]
Cc: Dorka, Lilian[Dorka.Lilian@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Thur 10/14/2021 7:20:59 PM (UTC)
Subject: EPA Complaint 27R-16-R6: Complaint and Resolution
[4-26-16 - Final EJ Petition with Exhibits.pdf](#)
[2021.01.08 Final ADEQ Recip Resolution Ltr and IRA 27R-16-R6.pdf](#)

As requested.

Jeryl W. Covington
Environmental Protection Specialist
U.S. Environmental Protection Agency
Office of General Counsel|External Civil Rights Compliance Office
1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524
Mail Code: 2310A
Washington, DC 20460
Desk: (202) 564-7713
covington.jeryl@epa.gov

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Mon 2/11/2019 10:05:11 PM (UTC)
Subject: 2019.02.11 (REVISED) Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 .docx
2019.02.11 (REVISED) Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 .docx

As discussed last week, I have made some revisions to the draft ADEQ resolution agreement to address the pending enforceable consent decree for Georgia Pacific.

To: Robinson, Brittany[Robinson.Brittany@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 2/13/2019 5:02:55 PM (UTC)
Subject: RE: Do you all have newer boilerplate language for ADEQ? I do not want to mess with this too much.
2019.02.11 (REVISED) Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6 .docx

There may be something later.

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Thur 2/28/2019 10:53:44 PM (UTC)
Subject: 2019.02.28 REDLINE Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6.docx
2019.02.28 REDLINE Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6.docx

Attached is the redline that depicts the changes to the draft document.

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Thur 2/28/2019 10:56:47 PM (UTC)
Subject: 2019.02.28 CLEAN Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6.docx
2019.02.28 CLEAN Final Draft Informal Resolution Agreement Between EPA and ADEQ - Complaint No 27R-16-R6.docx

Attached is a clean version of the ADEQ draft.

Please review the redline to ensure that the appropriate comments have been removed due to them being addressed.

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]
Cc: Rhines, Dale[rhines.dale@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Tue 4/16/2019 2:46:42 PM (UTC)
Subject: RE: Arkansas Title VI
Draft Resolution: 27R-16-R6

I have canvased my emails and attached is my last communication related to the draft resolution that included a redline and clean version.

There was one prior inquiry from Zahra on the 11th of March related to the development of the procedural safeguards program. You responded by stating that this program development would be similar to TCEQ's and included Kurt Temple on that communication. Kurt responded affirmatively.

-----Original Message-----

From: Dorka, Lilian
Sent: Tuesday, April 16, 2019 10:32 AM
To: Covington, Jeryl <Covington.Jeryl@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>
Subject: FW: Arkansas Title VI

Hi Zahra and Jeryl - Here is the last version I have. But, I could swear that I had a conversation with one of you where we caught something that needed to be changed/updated. Am I dreaming? Thanks!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

-----Original Message-----

From: Payne, James
Sent: Tuesday, April 16, 2019 10:11 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Subject: Arkansas Title VI

Hi. Could you resend the draft that's ready to be sent? And let's connect.

Sent from my iPhone

To: Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Tue 5/14/2019 6:49:03 PM (UTC)
Subject: FW: Revised Draft Informal Resolution Agreement: ADEQ 27R-16-R6
2019.05.07 DRAFT Informal Resolution Agreement Between EPA and ADEQ - EPA Complaint No 27R-16-R6.docx

I am forwarding a copy of the revisions/notes that resulted from ECRCO's meeting with the recipient on May 7, 2019.

From: Covington, Jeryl
Sent: Tuesday, May 07, 2019 12:54 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Gray, David <gray.david@epa.gov>; Payne, James <payne.james@epa.gov>; mcalister <mcalister@adeq.state.ar.us>; Chancellor, Erin <chancellor.erin@epa.gov>; Chiang, I-Jung <chiang.i-jung@epa.gov>
Cc: Brazauskas, Joseph <brazauskas.joseph@epa.gov>
Subject: Revised Draft Informal Resolution Agreement: ADEQ 27R-16-R6

Working revised draft informal resolution agreement per our meeting today.

Thank you for a very productive meeting today.

Jeryl W. Covington
Environmental Protection Specialist
U.S. Environmental Protection Agency
Office of General Counsel|External Civil Rights Compliance Office
1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524
Mail Code: 2310A
Washington, DC 20460
Desk: (202) 564-7713
Fax: (202) 565-0196
covington.jeryl@epa.gov

To: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Fri 5/29/2020 7:43:53 PM (UTC)
Subject: 05.29.20 (C Barnett Comments) DRAFT IRA Complaint No 27R-16-R6.docx
05.29.20 (C Barnett Comments) DRAFT IRA Complaint No 27R-16-R6.docx

I have highlighted the comments from C Barnett.

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Rhines, Dale[rhines.dale@epa.gov]
Cc: Khan, Zahra[Khan.Zahra@epa.gov]
From: Covington, Jeryl[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5744FF31964349539994E9EB4C3F90FC-COVINGTON,]
Sent: Wed 6/3/2020 2:20:02 PM (UTC)
Subject: DRAFT IRA Complaint No 27R-16-R6
05.29.20 (C Barnett Comments) DRAFT IRA Complaint No 27R-16-R6.docx

Attached is the revised draft IRA for complaint number 27R-16-R6.

Please note that the amended CD actions' impacts are **highlighted**.

This version includes comments from Chery Barnett related to the identification of the settling defendants and a modification of an action item that may be deleted due to the amended CD (this action item is **highlighted**).

Jeryl W. Covington
Environmental Protection Specialist
U.S. Environmental Protection Agency
Office of General Counsel|External Civil Rights Compliance Office
1200 Pennsylvania Avenue, N.W.|WJC-North|Rm 2524
Mail Code: 2310A
Washington, DC 20460
Desk: (202) 564-7713
Fax: (202) 565-0196
covington.jeryl@epa.gov

To: Covington, Jeryl[Covington.Jeryl@epa.gov]; Dorka, Lilian[Dorka.Lilian@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johanna[Johnson.Johanna@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]
Cc: Ryland, Renea[Ryland.Renea@epa.gov]; Wooster, Richard[Wooster.Richard@epa.gov]
From: Nelson, Russell[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E27FA59F166C40DEAAB3D866285A30BB-NELSON, RUSSELL]
Sent: Thur 10/7/2021 1:54:47 PM (UTC)
Subject: RE: EPA Complaint No. 27R-15-R6: Meeting with ADEQ
[Attachment 4 Use Designation.pdf](#)

As you all may know now, I learned from Charles Moulton, Administrative Law Judge for the Arkansas Pollution Control & Ecology Commission that ADEQ will not bring their proposed revisions to Regulation 2 - their water quality standards to the Commission for hearing on October 22, 2021. That information has been relayed to R6 senior management. I understand that there will likely be a face-to-face meeting between ADEQ and Region 6 management, although I cannot speak to a date. Marcia may have spoken to that in emails I have not seen yet.

I think the fundamental confusion ADEQ referred to is that they only exempt Mossy Lake from their water quality standards as a treatment system and the portion of Coffee Creek below it to Coffee Creek's confluence with the Ouachita River. The plant itself is in the SW portion of the City of Crossett, where its emissions may affect the community as well as where the discharge enters Coffee Creek above Mossy Lake, Mossy Lake itself and Coffee Creek below. The area they exempt over floods during a portion of the year - the CWA prohibits a water of the US from being used as a waste treatment system. Even if Mossy Lake were entirely man made, GP cannot control the flow/flooding during a portion of the year, thus it cannot be used as a treatment system then either.

I think it's important that ECRCO in particular understand that although the IRA required ADEQ to respond to EPA comments specific to Coffee Creek/Mossy Lake, it did not specify what comments to respond to. In ADEQ's response, it referenced a general EPA comment that itself referred to **Attachment 4**. That attachment was provided to ADEQ a second time with our comments on ADEQ's second Rule 2 (WQS) mark-up. That attachment contains more extensive comments that ADEQ should have responded to. That document is attached.

Russell

Russell Nelson
Regional Water Quality Standards Coordinator
Water Quality Protection (WDPQ)
U.S. EPA, Region 6
1201 Elm St., Suite 500
Dallas, TX 75270

Cell (972) 310-1539
(214) 665-6646
nelson.russell@epa.gov

"Follow the law. Follow the science. And be transparent." B. Ruckelshaus

-----Original Appointment-----

From: Covington, Jeryl <Covington.Jeryl@epa.gov>
Sent: Wednesday, October 6, 2021 2:39 PM
To: Dorka, Lilian; Khan, Zahra; Johnson, Johanna; Hicks, Basil; mcalister; Moncrieffe, Marcia; Nelson, Russell
Subject: EPA Complaint No. 27R-15-R6: Meeting with ADEQ
When: Wednesday, October 20, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Meeting with ADEQ to discuss the IRA commitments with respect to the attached response.

Microsoft Teams meeting

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ATTACHMENT 4

COFFEE CREEK AND MOSSY LAKE
USE DESIGNATION



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, SUITE 500
DALLAS, TEXAS 75270

July 31, 2019

Mary Barnett
Ecologist Coordinator
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Dear Ms. Barnett:

As agreed upon by the Environmental Protection Agency (EPA) Region 6 and Arkansas Department of Environmental Quality (ADEQ) staff, your office provided me with a copy of draft revisions to Regulation 2 that ADEQ plans to propose later this year and asked EPA staff to identify any significant concerns EPA may have prior to ADEQ's submission of the proposed revisions to Governor Hutchinson's office. As previously discussed, EPA will submit official comments and/or recommendations on ADEQ's revisions to Regulation 2 during the public comment period once they are proposed, which will likely occur in October 2019. However, based on our informal review of the draft revisions, EPA staff have identified several significant concerns related to revised language in Appendix A regarding Coffee Creek and Mossy Lake that we would like to bring to your attention.

The EPA and ADEQ have previously discussed EPA's concern that ADEQ specify updated designated uses for Coffee Creek and Mossy Lake in accordance with 40 CFR 131.10(i) and 131.20(a). See Miguel Flore's March 6, 2009 letter to Steve Drown, April 27, 2010 and September 13, 2010 letters to Teresa Marks letter and Jane Watson's July 31, 2009 letter to Steve Drown and August 3, 2010 letter submitting recommendations to ADEQ for its 2014 triennial revisions as they relate to these waters. Through the agencies' exchange of letters, as well as in telephone and face-to-face conversations, EPA and ADEQ have discussed various options for reaching resolution on these concerns. Consistent with our previous discussions, EPA has identified the following concerns with the draft revisions in Appendix A:

1. The draft revisions specific to Mossy Lake and the portion of Coffee Creek below Mossy Lake indicate that no "fishable/swimmable aquatic life uses" (CWA 101(a)(2) uses) apply to these waters. Although 101(a)(2) uses were removed from these water bodies in the 1980s, 40 CFR 131.20(a) requires states to "re-examine any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act every 3 years to determine if new information is available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly." EPA's 2007 use attainability analysis (UAA) documented both fish and macroinvertebrates as present year-round throughout Coffee Creek and in Mossy Lake. GP's 2013 UAA documented macroinvertebrates as present year-round. (Fish were documented in one of two sampling events, but the authors admit that non-detect of fish during the second sampling event may have been due to

methodological flaws). These studies confirm that there is an existing aquatic life use year-round throughout Coffee Creek and in Mossy Lake. 40 CFR 131.10(i) specifies that where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained. EPA's 2007 UAA also concluded that Coffee Creek upstream of Mossy Lake and Mossy Lake may be able to sustain a diverse aquatic community during and after inundation by the Ouachita River and a limited aquatic community during the annual dry seasons, and that Coffee Creek below Mossy Lake is likely to sustain a viable and diverse aquatic community within the back waters of the Ouachita River. In light of the findings of the most recent UAAs, EPA recommends that ADEQ re-examine whether maintaining no aquatic life uses on Mossy Lake and Coffee Creek below Mossy Lake is consistent with the requirements of 40 CFR 131.10(i) and 131.20(a). If ADEQ maintains its current position, please provide supporting justification to EPA.

2. The draft revisions specific to Coffee Creek include addition of a seasonal aquatic life use for a portion of the stream above Mossy Lake. It is unclear if the intended seasonal use for this waterbody segment is the state's Gulf Coastal Ecoregion aquatic life use. EPA recommends that ADEQ add language to clarify whether the intended seasonal use is the Gulf Coastal Ecoregion aquatic life use or some other use and specify the dates or in some other way clearly identify the period of time when it is intended to apply.
3. The draft revisions do not specify an aquatic life use that would apply to Coffee Creek above Mossy Lake during the season when the unspecified "seasonal use" does not apply. As noted above, EPA's 2007 found that some form of aquatic life use is both existing and attainable in this segment of Coffee Creek year-round. The UAA developed by AquaEter funded by Georgia-Pacific in 2013 did not refute EPA's 2007 UAA indicating that the Gulf Coastal Ecoregion designated use is attainable in Coffee Creek and Mossy Lake during the wet season and that a limited use may be attained during the dry season. In light of the findings of both UAAs and 40 CFR 131.10(i)'s requirement that designated uses must at a minimum reflect the uses actually being attained, EPA recommends that ADEQ identify the aquatic life uses that will apply to Coffee Creek above Mossy Lake throughout the entire year. Alternately, please provide justification to support ADEQ's determination that 101(a)(2) uses are not attainable for this water body segment during that part of the year not covered by the seasonal use.
4. The EPA also recommends that ADEQ evaluate the attainability of recreation uses in these waters, in accordance with 131.20(a) and 131.10(i). For the Gulf Coastal Ecoregion, Arkansas designates for primary contact recreation use "all streams with watersheds greater than 10 mi² and all lakes/reservoirs" (Regulation No. 2 at A-29). According to the 2007 EPA UAA, Mossy Lake is 550 acres and Coffee Creek has a watershed well over 25 square miles (1-3 EPA 2007). Therefore, all of Coffee Creek and Mossy Lake meet the Regulation 2 requirements for full Primary Contact Recreation designation.
5. Please clarify what designated uses apply to the segment of Coffee Creek south of the canal and north of Mossy Lake. If ADEQ includes this segment of Coffee Creek in the

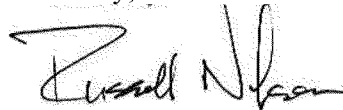
same waterbody segment as Mossy Lake, EPA recommends that ADEQ clarify this explicitly in the waterbody segment description for Mossy Lake.

6. The draft revisions refer to Mossy Lake in several instances as a “treatment unit.” Adoption of a “treatment unit” designated use appears to be in contravention of 40 CFR 131.10(a), which states “[I]n no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.” In addition, Footnotes No. 2 and 5 state that “Mossy Lake Treatment Unit - Mossy Lake Treatment Unit has been permitted as part of Georgia-Pacific treatment system through NPDES Permit No. AR0001210 and is a water of the state that is exempt from Rule 2.406 and Chapter Five (GC-3, #8).” EPA believes this footnote is inaccurate. EPA records do not indicate that Mossy Lake is currently permitted as a treatment unit, but instead shows Coffee Creek above Mossy Lake to be the receiving stream under GP Crossett’s current NPDES waste water permit. The phrase “treatment unit” should be deleted from the draft revised description of Mossy Lake in all instances.

In conclusion, although Georgia-Pacific funded the development of a UAA for these waters in 1987, 40 CFR 131.20(a) directs states to re-evaluate waterbodies without CWA §101(a)(2) uses every three years to determine if new information is available, and 40 CFR 131.10(i) directs states to revise its WQS to reflect the uses actually being attained where existing WQS specify designated uses less than those which are presently being attained. The EPA’s UAA and Water Quality Assessment (2007) demonstrate that Coffee Creek and Mossy Lake currently support and have the potential to support aquatic life indicative of streams in the Gulf Coastal Ecoregion year-round. The UAA developed by AquAeTer funded by Georgia-Pacific in 2013 did not refute the EPA’s 2007 UAA indicating that the Gulf Coastal Ecoregion designated use is attainable in Coffee Creek and Mossy Lake.

The EPA recommends that the ADEQ revise the draft proposed revisions to its water quality standards for the entirety of Coffee Creek and Mossy Lake to establish aquatic life and recreation uses that apply year-round. The EPA also strongly recommends that ADEQ not add the label “treatment unit” to Mossy Lake in its WQS. If you would like to discuss these concerns further, please contact me at (214) 665-6646 or nelson.russell@epa.gov.

Sincerely,



Russell Nelson
Regional Water Quality Standards

cc: Bob Blanz, PE., Chief Technical Officer, ADEQ

To: Covington, Jeryl[Covington.Jeryl@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Thur 1/27/2022 12:25:59 AM (UTC)
Subject: FW: January 28, 2022 APC&E Commission Meeting - U.S. EPA's Position Regarding DEQ's Rule 2
[MARTINEZ 8 23 2021 APCEC Roper ltr Admin determination 8.23.21.pdf](#)
[EXHIBIT F - Proposed Minute Order-updated-20220114.pdf](#)
[MARTINEZ 1 26 2022 EPA Letter to APCEE Commission Regarding DEQ Rule 2 January 26 2022.pdf](#)

FYI Team.

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Maguire, Charles <maguire.charles@epa.gov>
Sent: Wednesday, January 26, 2022 6:18 PM
To: comment@adeq.state.ar.us; comment@adeq.state.ar.us
Cc: moulton@adeq.state.ar.us; alan.york@adeq.state.ar.us; keogh@adeq.state.ar.us; Dorka, Lilian <Dorka.Lilian@epa.gov>; Hill, Troy <Hill.Troy@epa.gov>; Rauscher, Leslie <Rauscher.Leslie@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>
Subject: January 28, 2022 APC&E Commission Meeting - U.S. EPA's Position Regarding DEQ's Rule 2

Dear Mr. Roper,

The U.S. Environmental Protection Agency submits the attached letter in regards to the Division of Environmental Quality’s submittal to the Commission regarding Rule 2. The letter restates the EPA’s concerns with Rule 2 and follows our previous August 23, 2021, letter expressing the same.

Thank you,

Charles Maguire

US EPA Region 6 Water Division Director

To: Khan, Zahra[Khan.Zahra@epa.gov]
Cc: Randolph, Shay[shay.randolph@adeq.state.ar.us]; Covington, Jeryl[Covington.Jeryl@epa.gov]
From: Hicks, Basil[hicks@adeq.state.ar.us]
Sent: Fri 1/28/2022 5:12:51 PM (UTC)
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2
22-01 Adoption of Revisions Rule No 2(Water Quality Standards).pdf

Zahra,

I am forwarding the minute order approved by the Arkansas Pollution Control and Ecology Commission that finalizes Rule 2 and “orders that DEQ, as part of the next triennial review package or by January 28, 2024, whichever comes first, initiate rulemaking to address the issues related to Mossy Lake and Coffee Creek.”

I would like to ask for your help with part of our process. Can you help me identify members of the Crossett community and provide some contact information for them.

On our calls, I got the impression that Jeryl may have communicated with some community members. I want to make sure that if ECRCO has communicated with someone in that community that DEQ makes an effort to invite those people to the public meeting DEQ will be having in Crossett. Also, if you or Jeryl think one of those community members would be a good representative, I would appreciate your input.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us



From: Khan, Zahra [mailto:Khan.Zahra@epa.gov]
Sent: Tuesday, January 18, 2022 8:06 AM
To: Hicks, Basil
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Thank you, Basil! I will take a look.

From: Hicks, Basil <hicks@adeq.state.ar.us>
Sent: Friday, January 14, 2022 12:50 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>
Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Zahra,

I am forwarding this to you to keep you up to date on this matter.

Please let me know if you have any questions or if you would like to talk.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us



ARKANSAS
ENERGY & ENVIRONMENT

From: McAlister, Michael

Sent: Friday, January 14, 2022 10:23 AM

To: Moulton, Charles; Goff, Patricia

Cc: Hicks, Basil; York, Alan; Alberg, Peter

Subject: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Judge Moulton and Secretary Goff,

DEQ respectfully requests that consideration of DEQ's pending motion to adopt proposed changes to Rule 2 (filed in the above-referenced docket on 08/09/2021, with Exhibits B-1, C-1, and C-2 as filed on 11/24/2021) be placed on the agenda for decision at the Commission's next upcoming meeting on January 28, 2022.

DEQ also submits a revised Proposed Minute Order (Exhibit F, attached hereto) to replace the previously submitted proposals and to be included as part of the submission for consideration and approval.

Please be advised that DEQ is providing notice of this request to Charles W. Maguire, Director – Water Division, EPA Region 6.

Please contact me if you have any questions regarding this request.

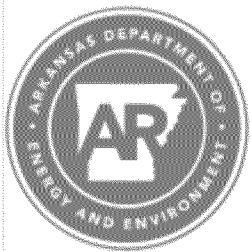
Thank you,

Michael McAlister | Deputy Chief Counsel

Energy and Environment | Office of Chief Counsel

5301 Northshore Drive | North Little Rock, AR 72118

t: 501.682.0918 | e: mcalister@adeq.state.ar.us



ARKANSAS
ENERGY & ENVIRONMENT

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Adoption
of Amendments to Rule 2**

Docket No. 20-004-R

MINUTE ORDER NO. 22- 01

After the public comment period that included public notice and hearing, and pursuant to Governor approval, the Arkansas Pollution Control and Ecology Commission hereby grants DEQ's Motion to Adopt Amendments to Rule 2, Rule Establishing Water Quality Standard for Surface Waters of the State of Arkansas, and orders that DEQ, as part of the next triennial review package or by January 28, 2024, whichever comes first, initiate rulemaking to address the issues related to Mossy Lake and Coffee Creek, and orders that the final revised rule approved on this date be submitted for review by the Joint Interim Committee on Administrative Rules of Legislative Council, and if required, the Joint Interim Committee on Public Health and Welfare and Labor.

**PROMULGATED THIS 28TH DAY OF JANUARY, 2022, BY ORDER OF THE
ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.**

COMMISSIONERS:

<u>SA</u>	S. Ausbrooks
<u>LB</u>	L. Bengal
<u>CC</u>	C. Colclasure
<u>JF</u>	J. Fox
<u>MG</u>	M. Goggans
<u>RM</u>	R. McMullen
<u>DM</u>	D. Melton

<u>RM</u>	R. Moss, Jr.
<u>CR</u>	C. Racey
<u>RR</u>	R. Reynolds
	R. Roper
<u>DV</u>	D. Vandergriff
	W. Ward

Richard Roper SUBMITTED BY: C. Moulton DATE PASSED: 1/28/22
R. Roper, Chair

To: Hicks, Basil[hicks@adeq.state.ar.us]
Cc: Randolph, Shay[shay.randolph@adeq.state.ar.us]; Covington, Jeryl[Covington.Jeryl@epa.gov]
From: Khan, Zahra[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C20DB37EC2C49948C2B6DBA2856EF30-KHAN, ZAHRA]
Sent: Mon 1/31/2022 3:24:46 PM (UTC)
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

OK, thank you. I will get back to you as soon as I can.

From: Hicks, Basil <hicks@adeq.state.ar.us>
Sent: Monday, January 31, 2022 10:23 AM
To: Khan, Zahra <Khan.Zahra@epa.gov>
Cc: Randolph, Shay <shay.randolph@adeq.state.ar.us>; Covington, Jeryl <Covington.Jeryl@epa.gov>
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

We would like to have contact information before the middle of February, or sooner if possible.

Thank you for your help.

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us



From: Khan, Zahra [<mailto:Khan.Zahra@epa.gov>]
Sent: Monday, January 31, 2022 8:58 AM
To: Hicks, Basil
Cc: Randolph, Shay; Covington, Jeryl
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Thank you, Basil. Let me discuss your request with the team and I will get back to you. When would you need these contacts by?

From: Hicks, Basil <hicks@adeq.state.ar.us>
Sent: Friday, January 28, 2022 12:13 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>
Cc: Randolph, Shay <shay.randolph@adeq.state.ar.us>; Covington, Jeryl <Covington.Jeryl@epa.gov>
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Zahra,

I am forwarding the minute order approved by the Arkansas Pollution Control and Ecology Commission that finalizes Rule 2 and "orders that DEQ, as part of the next triennial review package or by January 28, 2024, whichever comes first, initiate rulemaking to address the issues related to Mossy Lake and Coffee Creek."

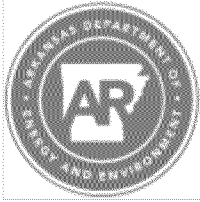
I would like to ask for your help with part of our process. Can you help me identify members of the Crossett community and provide some contact information for them.

On our calls, I got the impression that Jeryl may have communicated with some community members. I want to make sure that if ECRCO has communicated with someone in that community that DEQ makes an effort to invite those people to the public meeting DEQ will be having in Crossett. Also, if you or Jeryl think one of those community members would be a good representative, I would appreciate your input.

Thank you,

ED_006641_00000572-00001

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us



ARKANSAS
ENERGY & ENVIRONMENT

From: Khan, Zahra [<mailto:Khan.Zahra@epa.gov>]
Sent: Tuesday, January 18, 2022 8:06 AM
To: Hicks, Basil
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Thank you, Basil! I will take a look.

From: Hicks, Basil <hicks@adeq.state.ar.us>
Sent: Friday, January 14, 2022 12:50 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>
Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

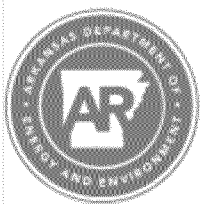
Zahra,

I am forwarding this to you to keep you up to date on this matter.

Please let me know if you have any questions or if you would like to talk.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us



ARKANSAS
ENERGY & ENVIRONMENT

From: McAlister, Michael
Sent: Friday, January 14, 2022 10:23 AM
To: Moulton, Charles; Goff, Patricia
Cc: Hicks, Basil; York, Alan; Alberg, Peter
Subject: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Judge Moulton and Secretary Goff,

DEQ respectfully requests that consideration of DEQ's pending motion to adopt proposed changes to Rule 2 (filed in the above-referenced docket on 08/09/2021, with Exhibits B-1, C-1, and C-2 as filed on 11/24/2021) be placed on the agenda for decision at the Commission's next upcoming meeting on January 28, 2022.

DEQ also submits a revised Proposed Minute Order (Exhibit F, attached hereto) to replace the previously submitted proposals and to be included as part of the submission for consideration and approval.

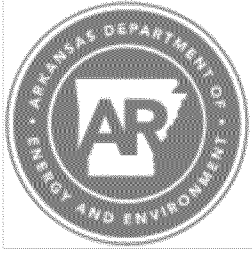
Please be advised that DEQ is providing notice of this request to Charles W. Maguire, Director – Water Division, EPA Region 6.

Please contact me if you have any questions regarding this request.

Thank you,

ED_006641_00000572-00002

Michael McAlister | Deputy Chief Counsel
Energy and Environment | **Office of Chief Counsel**
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0918 | e: mcAlister@adeq.state.ar.us



ARKANSAS
ENERGY & ENVIRONMENT

To: Dorka, Lilian[Dorka.Lilian@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]
Cc: Hoang, Anhthu[Hoang.Anhthu@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]; Ryland, Renea[Ryland.Renea@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Johnson, Johahna[Johnson.Johahna@epa.gov]
From: Maguire, Charles[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FFBF83D93E5E4A688F150348BF84F40C-MAGUIRE, CH]
Sent: Mon 1/31/2022 5:58:38 PM (UTC)
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Good point

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Monday, January 31, 2022 11:54 AM
To: Maguire, Charles <maguire.charles@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>
Cc: Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Right but the complaint was filed by an advocacy group and DEQ knows who that is, right? If they don't let's give them the names and contact for the "complainants" – advocacy group. They can reach out directly to the Advocates and through them, they can alert the community. I guess I have a concern if it appears we are brokering this engagement with the community.

Thoughts?

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Maguire, Charles <maguire.charles@epa.gov>
Sent: Monday, January 31, 2022 12:11 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>
Cc: Dorka, Lilian <Dorka.Lilian@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Would it be possible to just say the letter we sent remains our position on what ADEQ needs to do.

From: Khan, Zahra <Khan.Zahra@epa.gov>
Sent: Monday, January 31, 2022 11:08 AM
To: Maguire, Charles <maguire.charles@epa.gov>
Cc: Dorka, Lilian <Dorka.Lilian@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Yes. Understood that R6 is definitely not OK, but again to the point of having the right people participate in the public meeting, it seems we should at least offer this to the complainants.

Perhaps, Charles and co, if there is some language you would like to include in both the discussion with the Complainants, and response back to DEQ to indicate we are NOT OK, but that we value the public participation process and transparency of sharing this information?

From: Maguire, Charles <maguire.charles@epa.gov>
Sent: Monday, January 31, 2022 11:13 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>;

Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>

Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

We are not OK.... They basically are ignoring our requirement saying they will propose something later. Who knows what later means or even what they will propose

From: Dorka, Lilian <Dorka.Lilian@epa.gov>

Sent: Monday, January 31, 2022 10:10 AM

To: Khan, Zahra <Khan.Zahra@epa.gov>; Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Maguire, Charles <maguire.charles@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johahna <Johnson.Johahna@epa.gov>

Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Importance: High

I think in principle, I would have no concerns contacting complainants in this respect. However, it seems their Q for us is a result of their decision to finalize Rule 2 and I don't want our "cooperation" to be misconstrued as our agreement with their decision – UNLESS Region 6 is ok with their decision.

So, all this to say that we need to make sure we don't get ahead of Region 6's next steps in response to their finalizing Rule 2. It does make sense that if they are going ahead and having public involvement, we make sure they include the right people?

Charles and others in Region 6, any thoughts on this? Thanks!

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Khan, Zahra <Khan.Zahra@epa.gov>

Sent: Monday, January 31, 2022 10:03 AM

To: Dorka, Lilian <Dorka.Lilian@epa.gov>

Cc: Hoang, Anhthu <Hoang.Anhthu@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Maguire, Charles <maguire.charles@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>

Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

See email from Basil below, and attachment of minute order finalizing Rule 2...

Additionally, Basil has requested help in identifying community members to invite to a public meeting DEQ would like to have with Crossett. While Jeryl and I have spoken to several people in the community, for confidentiality reasons we certainly cannot share their information or contact off the bat. How do you (Lilian) feel about us reaching out to Complainants to request whether people would like to voluntarily submit their information, or have DEQ deal directly with providing invitations to the Complainants to disperse to their clients and contacts?

Zahra

From: Hicks, Basil <hicks@adeq.state.ar.us>

Sent: Friday, January 28, 2022 12:13 PM

To: Khan, Zahra <Khan.Zahra@epa.gov>

Cc: Randolph, Shay <shay.randolph@adeq.state.ar.us>; Covington, Jeryl <Covington.Jeryl@epa.gov>

Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Zahra,

I am forwarding the minute order approved by the Arkansas Pollution Control and Ecology Commission that finalizes Rule 2 and "orders that DEQ, as part of the next triennial review package or by January 28, 2024, whichever comes first, initiate rulemaking to address the issues related to Mossy Lake and Coffee Creek."

ED_006641_00000578-00002

I would like to ask for your help with part of our process. Can you help me identify members of the Crossett community and provide some contact information for them.

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Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us



From: Khan, Zahra [<mailto:Khan.Zahra@epa.gov>]
Sent: Tuesday, January 18, 2022 8:06 AM
To: Hicks, Basil
Subject: RE: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Thank you, Basil! I will take a look.

From: Hicks, Basil <hicks@adeq.state.ar.us>
Sent: Friday, January 14, 2022 12:50 PM
To: Khan, Zahra <Khan.Zahra@epa.gov>
Subject: FW: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Zahra,

I am forwarding this to you to keep you up to date on this matter.

Please let me know if you have any questions or if you would like to talk.

Thank you,

Basil V. Hicks III | Attorney Supervisor
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0884 | e: hicks@adeq.state.ar.us



From: McAlister, Michael
Sent: Friday, January 14, 2022 10:23 AM
To: Moulton, Charles; Goff, Patricia
Cc: Hicks, Basil; York, Alan; Alberg, Peter
Subject: APCE&EC Meeting agenda for January 28, 2022 -- Docket no. 20-004-R, Motion to Adopt Amendments to Rule 2

Judge Moulton and Secretary Goff,

DEQ respectfully requests that consideration of DEQ's pending motion to adopt proposed changes to Rule 2 (filed in the above-referenced docket on 08/09/2021, with Exhibits B-1, C-1, and C-2 as filed on 11/24/2021) be placed on the agenda for decision at the Commission's next upcoming meeting on January 28, 2022.

DEQ also submits a revised Proposed Minute Order (Exhibit F, attached hereto) to replace the previously submitted proposals and to be included as part of the submission for consideration and approval.

Please be advised that DEQ is providing notice of this request to Charles W. Maguire, Director – Water Division, EPA Region 6.

Please contact me if you have any questions regarding this request.

Thank you,

Michael McAlister | Deputy Chief Counsel

Energy and Environment | Office of Chief Counsel

5301 Northshore Drive | North Little Rock, AR 72118

t: 501.682.0918 | e: mcalist@adeq.state.ar.us



To: Dorka, Lilian[Dorka.Lilian@epa.gov]
Cc: Rhines, Dale[rhines.dale@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Johnson, Johanna[Johnson.Johanna@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Chancellor, Erin[chancellor.erin@epa.gov]; Gray, David[gray.david@epa.gov]; Payne, James[payne.james@epa.gov]; Chiang, I-Jung[chiang.i-jung@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]; Linck, Julie[Linck@adeq.state.ar.us]; Brazauskas, Joseph[brazauskas.joseph@epa.gov]
From: McAlister, Michael[MCALISTER@adeq.state.ar.us]
Sent: Tue 5/21/2019 9:38:25 PM (UTC)
Subject: ADEQ redline of working draft
2019.05.21 DRAFT Informal Resolution Agreement Between EPA and ADEQ - EPA Complaint No 27R-16-R6 redline.docx

Lilian,

Attached please find ADEQ's redline. It is still a work in progress, and I have tried to note passages where we are still working on detail on our end, specifically Section II.C., II.F., III.D, III.F., III.J., and III.L. – that said, it looks worse in redline than it really is, due more to structural issues we discussed rather than substantive issues. We can give everyone time to review and then set up a call when folks are available.

I am free as early as this Friday, or we can do it after Memorial Day – I'm pretty open right now for the rest of next week. Thanks again,

Michael McAlister
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0918
mcalister@adeq.state.ar.us

From: Dorka, Lilian [mailto:Dorka.Lilian@epa.gov]
Sent: Tuesday, May 21, 2019 9:15 AM
To: McAlister, Michael
Cc: Rhines, Dale; Covington, Jeryl; Johnson, Johanna; Khan, Zahra; Chancellor, Erin; Gray, David; Payne, James; Chiang, I-Jung; Moncrieffe, Marcia; Linck, Julie; Brazauskas, Joseph; Linck, Julie
Subject: RE: Tuesday call to talk about the draft agreement and options for language

Thanks so much Michael. That sounds great and we look forward to receiving the mark up. Thanks, Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: McAlister, Michael <MCALISTER@adeq.state.ar.us>
Sent: Tuesday, May 21, 2019 10:05 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johanna <Johnson.Johanna@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Chancellor, Erin <chancellor.erin@epa.gov>; Gray, David <gray.david@epa.gov>; Payne, James <payne.james@epa.gov>; Chiang, I-Jung <chiang.i-jung@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Linck, Julie <Linck@adeq.state.ar.us>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Linck, Julie <Linck@adeq.state.ar.us>
Subject: RE: Tuesday call to talk about the draft agreement and options for language

Lilian,

My apologies for not getting you a redline yesterday. My ability use technology while out of the office wasn't as successful or productive as I had hoped. I am back at my desk today, and will be finishing up the redline to send out. The

good thing is I was able to review the draft-in-progress with my Director and Julie Linck, and have some additional changes based on their input that I will be able to incorporate.

As always, please contact me with any questions or concerns – once I have the document back to you and you all have a chance to review, we can set a follow-up call with your folks and Region 6.

Thanks again for your continued understanding,

Michael McAlister
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0918
mcalister@adeq.state.ar.us

From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]
Sent: Friday, May 17, 2019 9:26 PM
To: McAlister, Michael
Cc: Rhines, Dale; Covington, Jeryl; Johnson, Johahna; Khan, Zahra; Chancellor, Erin; Gray, David; Payne, James; Chiang, I-Jung; Moncrieffe, Marcia; Brazauskas, Joseph; Linck, Julie
Subject: Re: Tuesday call to talk about the draft agreement and options for language

That sounds great Michael, thanks so much! Hope you have a restful weekend. Lilian

Sent from my iPhone

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
US EPA
202-564-9649 - Office
202-695-9888 - Cell

On May 17, 2019, at 5:20 PM, McAlister, Michael <MCALISTER@adeq.state.ar.us> wrote:

Lilian,

We have been working on the draft and addressing issues we identified in our 5/7 meeting. While we have a few that we are still working on, I do intend to have a mark-up to send you all on Monday. It will likely still need some tweaking, but my hope is that once we iron out some of the technical details on our end we will have a document we can all agree on. I am happy to get the redline to you and give everyone a chance to review/comment, then schedule a call when it is convenient for everyone.

It was a pleasure to meet with you and Jeryl and the team from Region 6 – I feel that it was very productive, and I look forward to talking again soon. Have a great weekend!

Michael

Michael McAlister
Managing Attorney

Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0918
mcalister@adeq.state.ar.us

From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

Sent: Friday, May 17, 2019 2:09 PM

To: McAlister, Michael

Cc: Rhines, Dale; Covington, Jeryl; Johnson, Johanna; Khan, Zahra; Chancellor, Erin; Gray, David; Payne, James; Chiang, I-Jung; Moncrieffe, Marcia; Brazauskas, Joseph

Subject: Tuesday call to talk about the draft agreement and options for language

Hi Michael,

Hope you are doing well! Again, it was a pleasure meeting you and everyone at ADEQ (and I am still thinking about that shrimp po boy sandwich! *) Thank you for your hospitality. I know we are supposed to have a call on Tuesday to discuss a couple of the provisions that needed a little work and share any info /suggestions that could help clarify/inform those provisions, based on your conversations with your experts there. However, I also hear from Erin that you might be able to share a redline with us today or Monday. That would be really helpful! It may be that we may not need the meeting on Tuesday unless there is something in your redline that we want to confirm we understand. Otherwise, our ECRCO/Region 6 team can review the redline, adjust the language and schedule a meeting for later on to discuss.

Does that sound ok to you? Please let me know what you think. Thanks again for your help!

Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Location: Microsoft Teams Meeting
Importance: Normal
Subject: FW: EPA Complaint No. 27R-16-R6: Meeting with ADEQ
Start Time: Wed 10/27/2021 2:00:00 PM (UTC)
End Time: Wed 10/27/2021 3:00:00 PM (UTC)
Required Attendees: Hoang, Anhthu
[2021.01.08 Final ADEQ Recip Resolution Ltr and IRA 27R-16-R6.pdf](#)
[Informal Resolution Agreement Report.pdf](#)

-----Original Appointment-----
From: Covington, Jeryl <Covington.Jeryl@epa.gov>
Sent: Tuesday, October 5, 2021 5:39 PM
To: Covington, Jeryl; Dorka, Lilian; Khan, Zahra; Johnson, Johahna; Hicks, Basil; mcalister
Cc: Moncrieffe, Marcia
Subject: EPA Complaint No. 27R-16-R6: Meeting with ADEQ
When: Wednesday, October 27, 2021 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Rescheduled meeting with ADEQ to discuss the IRA Report and obtain an update on the IRA commitments (Section III. D through M).

Microsoft Teams meeting

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To: Schwab, Justin[schwab.justin@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Tue 8/21/2018 3:52:19 PM (UTC)
Subject: ADEQ Original Complaint and Letter to ADEQ Accepting Complaint for Investigation
4-26-16 - Final EJ Petition with Exhibits.pdf
2016.06.28 Keogh, B ADEQ Recipient re Acceptance Letter 27R-16-R6.pdf

Hi Justin – per your request, here is the original complaint and our Recipient Acceptance Letter. Please let me know if you have any questions.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 28, 2016

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail#: 7015 1520 0002 0019 2816

In Reply Refer to:

EPA File No.: 27R-16-R6

Becky Keogh
Director
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Re: Acceptance of Administrative Complaint

Dear Ms. Keogh:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is accepting for investigation an administrative complaint filed against Arkansas Department of Environmental Quality (ADEQ), on April 26, 2016. The complaint alleges that ADEQ discriminated against the predominantly African American community of West Crossett, AR, on the bases of race or color with respect to ADEQ's allowance of an administrative continuance of a discharge permit that allows wastewater to flow through the community in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection or referral to the appropriate agency. (40 C.F.R. §7.120(d)(1)). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (C.F.R. § 7.120(b)(1)) Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*e.g.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (40 C.F.R. § 7.120 (b)(2)) Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (40 C.F.R. § 7.15)

After careful consideration, OCR has determined that the complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint describes

allegedly discriminatory acts that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory acts occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against ADEQ, a recipient of EPA financial assistance at the time of the alleged discriminatory acts.

Accordingly, OCR will investigate the following:

1. Whether ADEQ discriminated against the predominantly African American community of West Crossett, AR, on the bases of race and/or color, in violation of Title VI of the Civil Rights Act, and EPA's implementing regulation, by allowing the administrative continuance of NPDES Permit No. AR0001210 that allegedly does not meet the standards of the Clean Water Act; and
2. Whether ADEQ discriminated against the predominantly African American community of West Crossett, AR, on the bases of race and/or color, in violation of Title VI of the Civil Rights Act and EPA's implementing regulation, by allowing the administrative continuance of a NPDES permit No. AR0001210 that allegedly exposes the community to harmful emissions and that allegedly eliminates the use of Coffee Creek in violation of the Clean Water Act.

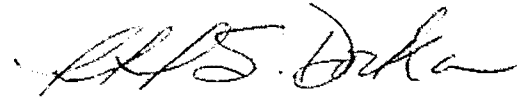
The decision to investigate the issues above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the recipient, if appropriate, and determine next steps utilizing its internal procedures. In the intervening time, OCR will provide the recipient with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copy of the letter. *See* 40 C.F.R. 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at <http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi>. We may be contacting both you and the complainants in the future to discuss your potential interest in pursuing ADR, as well as ADEQ's interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf for a fuller explanation of the complaint resolution process.

Finally, we would like to remind you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have questions regarding this letter, please contact Zahra Khan, case manager, at 202-564-0460, via electronic mail at khan.zahra@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilian S. Dorka". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Lilian S. Dorka
Acting Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel,
Civil Rights & Finance Law Office

Samuel Coleman
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 6

Michael H. Shapiro
Principal Deputy Assistant Administrator
Deputy Civil Rights Official
U.S. EPA Office of Water

From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Attendees: Temple, Kurt; Rhodes, Julia; Hicks, Basil; Shane Khoury; Linck, Julie; Golden, April; McAlister, Michael; Rhines, Dale; Covington, Jeryl; Khan, Zahra; Johnson, Johahna; Moncrieffe, Marcia; Barnett, Cheryl; Gray, David; Blanco, Arturo; Ryland, Renea; Burrell, Monica; Osbourne, Margaret; Vaughn, Gloria; Hayes, Mark; Frey, Sarah; Smith, Suzanne; Welton, Patricia
Location: Microsoft Teams Meeting
Importance: Normal
Subject: FOLLOW UP Conversation With ADEQ (ADEE-DEQ)
Start Time: Wed 7/1/2020 8:00:00 PM (UTC)
End Time: Wed 7/1/2020 9:00:00 PM (UTC)
Required Attendees: Hicks, Basil; Shane Khoury; Linck, Julie; Golden, April; mcalister; Rhines, Dale; Covington, Jeryl; Khan, Zahra; Johnson, Johahna; Moncrieffe, Marcia; Barnett, Cheryl
Optional Attendees: Temple; Rhodes, Julia; Gray, David; Blanco, Arturo; Ryland, Renea; Burrell, Monica; Osbourne, Margaret; Vaughn, Gloria; Hayes, Mark; Frey, Sarah; Smith, Suzanne; Welton, Patricia

DRAFT Informal Resolution Agreement Complaint No 27R-16-R6 DEQ-edits 20200629.docx

Sorry again everyone. Thursday will not work for folks here who need to be on the call. ☹️ So, I am trying for next Wednesday.

Sorry all – need to reschedule. We will try for next Thursday, although, we need to change the time a bit. Thanks everyone!

Hello everyone, I’m rescheduling per a request from colleagues at DEQ. Please let me know if this new time/date presents a problem for anyone. Thanks! Lilian

As we agreed today, sending this follow up meeting request. Thank you everyone for a very productive call today! Lilian

Conversation to discuss the status of our informal resolution agreement, the CD, and moving forward.

Join Microsoft Teams Meeting

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Conference ID: 707 486 105#

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To: Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]
Cc: Rhines, Dale[rhines.dale@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Johnson, Johanna[Johnson.Johanna@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Sent: Wed 8/26/2020 6:26:49 PM (UTC)
Subject: FW: Next draft of Informal Resolution Agreement
2020.08.24 REVISED DRAFT IRA Complaint No 27R-16-R6 CLEAN for discussion with DEQ.docx

See below my initial note to Michael with attached draft.

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: Dorka, Lilian
Sent: Monday, August 24, 2020 4:46 PM
To: 'McAlister, Michael' <MCALISTER@adeq.state.ar.us>
Subject: Next draft of Informal Resolution Agreement
Importance: High

Thanks again Michael for all of your help! Attached is the “clean” draft with annotated comments to aid in our discussion. Let’s plan to start our conversation with the Commitments Section (Section III) to make sure we get to the most important issues – such as the Coffee/Mossy review issue.

Please let me know if it will be at all possible to speak this Thursday 8/27, afternoon between 12 and 3:00 your time. If not, next Tuesday, September 1 after 2:30 your time (3:30 DC time.) I think we should reserve an hour and a half if possible. Thanks so much and I am hopeful we can have a resolution this FY. Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: McAlister, Michael <MCALISTER@adeq.state.ar.us>
Sent: Monday, August 24, 2020 10:49 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Subject: RE: draft

Lilian,
Good to hear from you. I very much appreciate the effort that went in to preparing a cleaned up draft, and I look forward to receiving that.
I will check availability on this end for a call, but Thursday might not be workable – if not, I will get you proposed dates/times as soon as possible.
I will also communicate to my management your desire to wrap this up by the end of September and will do everything I can to help us meet that goal. As I’ve shared with you before, I believe we have made significant progress is hashing out some complicated issues, and I continue to be encouraged and hopeful that we can find resolution.
I hope that you and everyone on your end are well and remain safe in these challenging days. Look forward to talking soon,
Michael

Michael McAlister | Deputy Chief Counsel
Energy and Environment | Office of Chief Counsel
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0918 | e: mcalister@adeq.state.ar.us



ARKANSAS

ENERGY & ENVIRONMENT

From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

Sent: Monday, August 24, 2020 8:56 AM

To: McAlister, Michael

Subject: RE: draft

Importance: High

Hello Michael, hope you and your family are well! Sorry for the hiatus as we reviewed what you sent to us, conferred with the region and did a clean sweep over the doc. (The redline was getting very hard to read.)

I think we have worked most things through. However, there is still the issue of the assessment of Coffee Creek and Mossy Lake during the current Triennial review.

We have created a clean version of the agreement with some "bottom line" language that ECRCO and the Region would like to see, in order to resolve the complaint. We expect to have it ready to send to you **by this afternoon**.

Is there a way we can shoot for a call this Thursday (maybe 2-3 CST 3-4 EST as usual) to discuss thoroughly whatever issues or sticking points still remain? Or, if that is not possible, beginning of the week of the 31st?

I have assured my front office folks that we will resolve this complaint by the end of the fiscal year (9/30/2020) so I am trying mightily to have an signed agreement by then. I know you have been working hard to get this to the finish line. I think we are close so I'd like to give it a push with your help.

Please let me know what you think and expect another draft by this afternoon. Thanks so much for all your help Michael!

Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: McAlister, Michael <MCALISTER@adeq.state.ar.us>

Sent: Wednesday, July 1, 2020 9:06 AM

To: Dorka, Lilian <Dorka.Lilian@epa.gov>

Subject: RE: draft

Lilian,

Basil and I are ready to talk about the proposed edits we made to the draft that came out of our last discussion (please see attached.) This is Basil's and my work product – we have not had a chance to discuss this with the senior management in detail or have it reviewed/approved, but are hopeful that it addresses some of the issues raised and maybe gives us a path forward. I look forward to a productive discussion this afternoon and continued progress towards resolution.

Thanks!

Michael

From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]
Sent: Tuesday, June 30, 2020 6:25 PM
To: McAlister, Michael
Subject: Re: draft

Hi Michael , checking in to make sure we are set for tomorrow. Thanks!

Lilian S. Dorka, Director
External Civil Rights Compliance Office
EPA, Office of General Counsel
WJC-North Room 2524
202-564-9649 - Office
202-695-9888 - Cell

Sent from my iPhone

On Jun 25, 2020, at 12:12 PM, Dorka, Lilian <Dorka.Lilian@epa.gov> wrote:

Hi Michael – hope all is great with you! Just wanted to check in and see if you had any paper you wanted to share before this afternoon's call? Thanks! Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: McAlister, Michael <MCALISTER@adeq.state.ar.us>
Sent: Wednesday, June 3, 2020 3:54 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Hicks, Basil <hicks@adeq.state.ar.us>; Linck, Julie <Linck@adeq.state.ar.us>; Khoury, Shane <Shane.Khoury@adeq.state.ar.us>
Subject: draft
Importance: High

Lilian,
Attached is the draft with suggested edits/comments.
We can talk through any questions/concerns tomorrow.
Thanks,

Michael McAlister | Deputy Chief Counsel
Energy and Environment | **Office of Chief Counsel**
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0918 | e: mcalist@adeq.state.ar.us
<image001.png>

From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Attendees: mcalister; Hicks, Basil; Covington, Jeryl; Rhines, Dale; Temple, Kurt; Khan, Zahra; Johnson, Johahna; Moncrieffe, Marcia; Ryland, Renea; Frey, Sarah; Barnett, Cheryl; Vaughn, Gloria; Blanco, Arturo; Burrell, Monica; Brown, Jamesr; Nelson, Russell
Location: Microsoft Teams Meeting
Importance: Normal
Subject: Conversation with AR DEQ (Michael and Basil) About Latest Draft Informal Resolution Agreement
Start Time: Tue 9/29/2020 7:00:00 PM (UTC)
End Time: Tue 9/29/2020 8:30:00 PM (UTC)
Required Attendees: mcalister; Hicks, Basil; Covington, Jeryl; Rhines, Dale; Temple; Khan, Zahra; Johnson, Johahna; Moncrieffe, Marcia; Ryland, Renea; Frey, Sarah; Barnett, Cheryl; Vaughn, Gloria; Blanco, Arturo; Burrell, Monica; Brown, Jamesr; Nelson, Russell

[2020.08.24 REVISED DRAFT IRA Complaint No 27R-16-R6 CLEAN for discussion with DEQ.docx](#)

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To: Dorka, Lilian[Dorka.Lilian@epa.gov]
From: Khan, Zahra[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C20DB37EC2C49948C2B6DBA2856EF30-KHAN, ZAHRA]
Sent: Tue 8/21/2018 3:19:54 PM (UTC)
Subject: ADEQ
[4-26-16 - Final EJ Petition with Exhibits.pdf](#)
[2016.06.28 Keogh, B ADEQ Recipient re Acceptance Letter 27R-16-R6.pdf](#)

Complaint and Recipient Acceptance Letter

To: Dorka, Lilian[Dorka.Lilian@epa.gov]
Cc: Rhines, Dale[rhines.dale@epa.gov]; Covington, Jeryl[Covington.Jeryl@epa.gov]; Johnson, Johanna[Johnson.Johanna@epa.gov]; Khan, Zahra[Khan.Zahra@epa.gov]; Chancellor, Erin[chancellor.erin@epa.gov]; Gray, David[gray.david@epa.gov]; Payne, James[payne.james@epa.gov]; Chiang, I-Jung[chiang.i-jung@epa.gov]; Moncrieffe, Marcia[Moncrieffe.Marcia@epa.gov]; Linck, Julie[Linck@adeq.state.ar.us]; Brazauskas, Joseph[brazauskas.joseph@epa.gov]
From: mcalister[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BD9BE843A16B4378A61FBF70099D17B5-MCALISTER]
Sent: Tue 5/21/2019 9:38:25 PM (UTC)
Subject: ADEQ redline of working draft
2019.05.21 DRAFT Informal Resolution Agreement Between EPA and ADEQ - EPA Complaint No 27R-16-R6_redline.docx

Lilian,

Attached please find ADEQ's redline. It is still a work in progress, and I have tried to note passages where we are still working on detail on our end, specifically Section II.C., II.F., III.D, III.F., III.J., and III.L. – that said, it looks worse in redline than it really is, due more to structural issues we discussed rather than substantive issues. We can give everyone time to review and then set up a call when folks are available.

I am free as early as this Friday, or we can do it after Memorial Day – I'm pretty open right now for the rest of next week. Thanks again,

Michael McAlister
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0918
mcalister@adeq.state.ar.us

From: Dorka, Lilian [mailto:Dorka.Lilian@epa.gov]
Sent: Tuesday, May 21, 2019 9:15 AM
To: McAlister, Michael
Cc: Rhines, Dale; Covington, Jeryl; Johnson, Johanna; Khan, Zahra; Chancellor, Erin; Gray, David; Payne, James; Chiang, I-Jung; Moncrieffe, Marcia; Linck, Julie; Brazauskas, Joseph; Linck, Julie
Subject: RE: Tuesday call to talk about the draft agreement and options for language

Thanks so much Michael. That sounds great and we look forward to receiving the mark up. Thanks, Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

From: McAlister, Michael <MCALISTER@adeq.state.ar.us>
Sent: Tuesday, May 21, 2019 10:05 AM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Johnson, Johanna <Johnson.Johanna@epa.gov>; Khan, Zahra <Khan.Zahra@epa.gov>; Chancellor, Erin <chancellor.erin@epa.gov>; Gray, David <gray.david@epa.gov>; Payne, James <payne.james@epa.gov>; Chiang, I-Jung <chiang.i-jung@epa.gov>; Moncrieffe, Marcia <Moncrieffe.Marcia@epa.gov>; Linck, Julie <Linck@adeq.state.ar.us>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Linck, Julie <Linck@adeq.state.ar.us>
Subject: RE: Tuesday call to talk about the draft agreement and options for language

Lilian,

My apologies for not getting you a redline yesterday. My ability use technology while out of the office wasn't as

successful or productive as I had hoped. I am back at my desk today, and will be finishing up the redline to send out. The good thing is I was able to review the draft-in-progress with my Director and Julie Linck, and have some additional changes based on their input that I will be able to incorporate.

As always, please contact me with any questions or concerns – once I have the document back to you and you all have a chance to review, we can set a follow-up call with your folks and Region 6.

Thanks again for your continued understanding,

Michael McAlister
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0918
mcalister@adeq.state.ar.us

From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

Sent: Friday, May 17, 2019 9:26 PM

To: McAlister, Michael

Cc: Rhines, Dale; Covington, Jeryl; Johnson, Johanna; Khan, Zahra; Chancellor, Erin; Gray, David; Payne, James; Chiang, I-Jung; Moncrieffe, Marcia; Brazauskas, Joseph; Linck, Julie

Subject: Re: Tuesday call to talk about the draft agreement and options for language

That sounds great Michael, thanks so much! Hope you have a restful weekend. Lilian

Sent from my iPhone

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
US EPA
202-564-9649 - Office
202-695-9888 - Cell

On May 17, 2019, at 5:20 PM, McAlister, Michael <MCALISTER@adeq.state.ar.us> wrote:

Lilian,

We have been working on the draft and addressing issues we identified in our 5/7 meeting. While we have a few that we are still working on, I do intend to have a mark-up to send you all on Monday. It will likely still need some tweaking, but my hope is that once we iron out some of the technical details on our end we will have a document we can all agree on. I am happy to get the redline to you and give everyone a chance to review/comment, then schedule a call when it is convenient for everyone.

It was a pleasure to meet with you and Jeryl and the team from Region 6 – I feel that it was very productive, and I look forward to talking again soon. Have a great weekend!

Michael

Michael McAlister

ED_006641_00000693-00002

Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0918
mcalist@adeq.state.ar.us

From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]

Sent: Friday, May 17, 2019 2:09 PM

To: McAlister, Michael

Cc: Rhines, Dale; Covington, Jeryl; Johnson, Johanna; Khan, Zahra; Chancellor, Erin; Gray, David; Payne, James; Chiang, I-Jung; Moncrieffe, Marcia; Brazauskas, Joseph

Subject: Tuesday call to talk about the draft agreement and options for language

Hi Michael,

Hope you are doing well! Again, it was a pleasure meeting you and everyone at ADEQ (and I am still thinking about that shrimp po boy sandwich! *) Thank you for your hospitality. I know we are supposed to have a call on Tuesday to discuss a couple of the provisions that needed a little work and share any info /suggestions that could help clarify/inform those provisions, based on your conversations with your experts there. However, I also hear from Erin that you might be able to share a redline with us today or Monday. That would be really helpful! It may be that we may not need the meeting on Tuesday unless there is something in your redline that we want to confirm we understand. Otherwise, our ECRCO/Region 6 team can review the redline, adjust the language and schedule a meeting for later on to discuss.

Does that sound ok to you? Please let me know what you think. Thanks again for your help!

Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell

To: Dorka, Lilian[Dorka.Lilian@epa.gov]
Cc: Hicks, Basil[hicks@adeq.state.ar.us]; Linck, Julie[Linck@adeq.state.ar.us]; Khoury, Shane[Shane.Khoury@adeq.state.ar.us]
From: McAlister, Michael[MCALISTER@adeq.state.ar.us]
Sent: Wed 6/3/2020 7:53:54 PM (UTC)
Subject: draft
DRAFT Informal Resolution Agreement Complaint No 27R-16-R6 DEQ-edits.docx

Lilian,
Attached is the draft with suggested edits/comments.
We can talk through any questions/concerns tomorrow.
Thanks,

Michael McAlister | Deputy Chief Counsel
Energy and Environment | **Office of Chief Counsel**
5301 Northshore Drive | North Little Rock, AR 72118
t: 501.682.0918 | e: mcalist@adeq.state.ar.us



Organizer: Dorka, Lilian[Dorka.Lilian@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Attendees: Dorka, Lilian; Temple, Kurt; Rhodes, Julia; Hicks, Basil; Shane Khoury; Linck, Julie; Golden, April; McAlister, Michael; Rhines, Dale; Covington, Jeryl; Khan, Zahra; Johnson, Johahna; Moncrieffe, Marcia; Barnett, Cheryl; Gray, David; Blanco, Arturo; Ryland, Renea; Burrell, Monica; Osbourne, Margaret; Vaughn, Gloria; Hayes, Mark; Frey, Sarah; Smith, Suzanne; Welton, Patricia
Location: Microsoft Teams Meeting
Importance: Normal
Subject: FOLLOW UP Conversation With ADEQ (ADEE-DEQ)
Start Time: Wed 7/1/2020 8:00:00 PM (UTC)
End Time: Wed 7/1/2020 9:00:00 PM (UTC)
Required Attendees: Hicks, Basil; Shane Khoury; Linck, Julie; Golden, April; McAlister, Michael; Rhines, Dale; Covington, Jeryl; Khan, Zahra; Johnson, Johahna; Moncrieffe, Marcia; Barnett, Cheryl
Optional Attendees: Temple, Kurt; Rhodes, Julia; Gray, David; Blanco, Arturo; Ryland, Renea; Burrell, Monica; Osbourne, Margaret; Vaughn, Gloria; Hayes, Mark; Frey, Sarah; Smith, Suzanne; Welton, Patricia

DRAFT Informal Resolution Agreement Complaint No 27R-16-R6_DEQ-edits 20200629.docx

Sorry again everyone. Thursday will not work for folks here who need to be on the call. 😞 So, I am trying for next Wednesday.

Sorry all – need to reschedule. We will try for next Thursday, although, we need to change the time a bit. Thanks everyone!

Hello everyone, I’m rescheduling per a request from colleagues at DEQ. Please let me know if this new time/date presents a problem for anyone. Thanks! Lilian

As we agreed today, sending this follow up meeting request. Thank you everyone for a very productive call today! Lilian

Conversation to discuss the status of our informal resolution agreement, the CD, and moving forward.

Join Microsoft Teams Meeting
+1 202-991-0477 United States, Washington DC (Toll)
Conference ID: 707 486 105#
[Local numbers](#) | [Reset PIN](#) | [Learn more about Teams](#) | [Meeting options](#)

Organizer: Dorka, Lilian[Dorka.Lilian@epa.gov]
From: Dorka, Lilian[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]
Location: Microsoft Teams Meeting
Importance: Normal
Subject: Conversation with AR DEQ (Michael and Basil) About Latest Draft Informal Resolution Agreement
Start Time: Tue 9/29/2020 7:00:00 PM (UTC)
End Time: Tue 9/29/2020 8:30:00 PM (UTC)
Required Attendees: McAlister, Michael; Hicks, Basil; Covington, Jeryl; Rhines, Dale; Temple, Kurt; Khan, Zahra; Johnson, Johahna; Moncrieffe, Marcia; Ryland, Renea; Frey, Sarah; Barnett, Cheryl; Vaughn, Gloria; Blanco, Arturo; Burrell, Monica; Brown, Jamesr; Nelson, Russell

2020.08.24 REVISED DRAFT IRA Complaint No 27R-16-R6 CLEAN for discussion with DEQ.docx

Join Microsoft Teams Meeting

+1 202-991-0477 United States, Washington DC (Toll)

Conference ID: 635 883 237#

[Local numbers](#) | [Reset PIN](#) | [Learn more about Teams](#) | [Meeting options](#)

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

To: Hill, Troy[Hill.Troy@epa.gov]
From: Maguire, Charles[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FFBF83D93E5E4A688F150348BF84F40C-MAGUIRE, CH]
Sent: Mon 10/18/2021 12:48:03 PM (UTC)
Subject: FW: Title Vi
2021.01.08 Final ADEQ Recip Resolution Ltr and IRA 27R-16-R6.pdf

fyi

-----Original Message-----

From: Ryland, Renea <Ryland.Renea@epa.gov>
Sent: Wednesday, October 13, 2021 4:11 PM
To: Maguire, Charles <maguire.charles@epa.gov>
Subject: RE: Title Vi

Hi Charles. Unfortunately, I don't. The closest thing I have is the letter from ECRCO forwarding the final resolution agreement to ADEQ (and attaching the resolution agreement itself). I'm forwarding it to you in case you don't have it handy. Sorry not to be more helpful. Renea

-----Original Message-----

From: Maguire, Charles <maguire.charles@epa.gov>
Sent: Wednesday, October 13, 2021 3:32 PM
To: Ryland, Renea <Ryland.Renea@epa.gov>
Subject: Title Vi

Do you have something that explains the Title VI complaint and agreement (briefly ☐)...

Sent from my iPhone

To: Hill, Troy[Hill.Troy@epa.gov]
From: Maguire, Charles[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FFBF83D93E5E4A688F150348BF84F40C-MAGUIRE, CH]
Sent: Tue 11/30/2021 6:28:33 PM (UTC)
Subject: FW: URGENT! Draft Email Response to Commission - Update: ADEQ 27R-16-R6

Do you have Julie's phone number

From: Gray, David <gray.david@epa.gov>
Sent: Tuesday, November 30, 2021 12:00 PM
To: Maguire, Charles <maguire.charles@epa.gov>
Subject: Re: URGENT! Draft Email Response to Commission - Update: ADEQ 27R-16-R6

call Julie

David Gray
Acting Regional Administrator
EPA Region 6 - Arkansas, Louisiana, New Mexico, Oklahoma, Texas
214-665-8120 o
214-789-2619 c

On Nov 30, 2021, at 11:59 AM, Maguire, Charles <maguire.charles@epa.gov> wrote:

No. They have lots of CWA issues with what they want to propose. We are going to give them comments on their proposal (probably tomorrow)... but at this point we are not even close.

From: Gray, David <gray.david@epa.gov>
Sent: Tuesday, November 30, 2021 11:56 AM
To: Maguire, Charles <maguire.charles@epa.gov>
Cc: Chiang, I-Jung <chiang.i-jung@epa.gov>; Dwyer, Stacey <Dwyer.Stacey@epa.gov>; Hill, Troy <Hill.Troy@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>
Subject: RE: URGENT! Draft Email Response to Commission - Update: ADEQ 27R-16-R6

Have we agreed with ADEQ?

From: Maguire, Charles <maguire.charles@epa.gov>
Sent: Tuesday, November 30, 2021 11:13 AM
To: Gray, David <gray.david@epa.gov>
Cc: Chiang, I-Jung <chiang.i-jung@epa.gov>; Dwyer, Stacey <Dwyer.Stacey@epa.gov>; Hill, Troy <Hill.Troy@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>
Subject: URGENT! Draft Email Response to Commission - Update: ADEQ 27R-16-R6

David
I think I need to quickly correct this miscommunication from ADEQ to their Commission. Are you OK with this email response to the Commission's email to Russel?
I would like to send today. We are also making sure Marcia is aware, and as you can see ORC has reviewed.
Thanks
Charles

From: Martinez, Maria <Martinez.Maria@epa.gov>
Sent: Tuesday, November 30, 2021 11:00 AM
To: Maguire, Charles <maguire.charles@epa.gov>
Cc: Hill, Troy <Hill.Troy@epa.gov>; Rauscher, Leslie <Rauscher.Leslie@epa.gov>
Subject: Draft Email Response to Commission - Update: ADEQ 27R-16-R6

Charles,

Please see immediately below for our recommended draft email response to the APC&E's Commission contact Mr. Moulton.

Maria

From: Ryland, Renea <Ryland.Renea@epa.gov>
Sent: Tuesday, November 30, 2021 10:55 AM
To: Martinez, Maria <Martinez.Maria@epa.gov>; Nelson, Russell <nelson.russell@epa.gov>; Wooster, Richard <Wooster.Richard@epa.gov>; Medrano, Selena <Medrano.Selena@epa.gov>
Subject: RE: Input Needed by Noon Today, 11/30 - Draft Email Response to Commission - Update: ADEQ 27R-16-R6

Looks good to me, although I might make a couple of clarifying edits. But just suggestions. Renea

Mr. Moulton,

My staff has forwarded the email below regarding DEQ's request for the PC&E Commission to adopt DEQ's proposed changes to Rule 2 on December 3, 2021, based on a presumption of a resolution between EPA Region 6 and DEQ. We believe that they may have been some miscommunication on this matter. Although ~~since~~ EPA is in receipt of recent information from DEQ on November 24, 2021, specifically DEQ's proposal for no action on the specific issues previously in discussion, we have not yet responded. The EPA will be responding formally to DEQ on the current status of the situation in an upcoming letter. We will ensure that the Commission gets a copy of that response letter prior to the Commission meeting on December 3, 2021.

From: Moulton, Charles <MOULTON@adeq.state.ar.us>
Sent: Monday, November 29, 2021 3:48 PM
To: Nelson, Russell <nelson.russell@epa.gov>
Cc: Richard Roper <rroper@bartonandroper.com>
Subject: APC&EC December 3rd meeting

Mr. Nelson –

I'm fairly confident you are already aware of this but Chairman Roper instructed me to let you know that DEQ's request for the PC&E Commission to adopt DEQ's proposed changes to Rule 2 is on the December 3, 2021, APC&EC agenda.

It's my understanding that a resolution of sorts has been reached between Region 6 and DEQ which has addressed, for now, Region 6's current concerns about Rule 2.

The December Commission meeting is in-person and it's my understanding it will be broadcast via DEQ's YouTube channel.

Best,

Charles Moulton | Administrative Law Judge
Energy & Environment | **Pollution Control & Ecology Commission**
3800 Richards Road | North Little Rock, AR 72117
t: 501.682.7890 | f: 501.682.7891 | e: moulton@adeq.state.ar.us
www.adeq.state.ar.us/commission/
<image001.png>

To: Maguire, Charles[maguire.charles@epa.gov]; Hill, Troy[Hill.Troy@epa.gov]
From: Martinez, Maria[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C1654E39CA0B42EAABA9DE964612A0EA-MARTINEZ, MARIA]
Sent: Wed 12/1/2021 7:00:30 PM (UTC)
Subject: Arkansas Letter
MARTINEZ 8 23 2021 APCEC Roper ltr Admin determination 8.23.21.pdf

Is the attached letter the one you were looking for?

Message

From: Martinez, Maria [Martinez.Maria@epa.gov]
Sent: 8/23/2021 8:49:56 PM
To: Hill, Troy [Hill.Troy@epa.gov]
Subject: Need your help with the AR Commission letter and getting the new eRouting link from Natalie. Our Branch's work has halted until we get the new link to eRouting. See attachment. eom
Attachments: 911 - What more to do? See below . . . Charles already has the letter. FW: Coffee Creek
Importance: High

To: Berry, Natalie[Berry.Natalie@epa.gov]
Cc: Maguire, Charles[maguire.charles@epa.gov]; Hill, Troy[Hill.Troy@epa.gov]; Wooster, Richard[Wooster.Richard@epa.gov]
From: Martinez, Maria[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C1654E39CA0B42EAABA9DE964612A0EA-MARTINEZ, MARIA]
Sent: Mon 8/23/2021 9:30:27 PM (UTC)
Subject: Division Director Signature - Letter to AR Commission Regarding Coffee Creek/Mossy Lake
APCEC Roper ltr Admin determination 8.23.21.docx

Natalie,

We would appreciate your assistance in getting the attached letter signed by Charles, after your processing. Due to the priority nature of the letter and the eRouting link issue we encountered today, we were needing the letter processed through email. The letter has received input by the RA's Office and ORC already.

Thank you for your assistance.

Maria
5-2230



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

Richard Roper, Chair
Arkansas Pollution Control and Ecology Commission
3800 Richards Rd,
North Little Rock, AR 72117

Dear Mr. Roper;

It is the Environmental Protection Agency's (EPA) understanding that the Arkansas Division of Environmental Quality (ADEQ) has filed a motion to adopt proposed changes to Regulation 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, with the Arkansas Pollution Control and Ecology Commission (Commission) to be heard during the pending August 27, 2021 hearing (Docket #20-004-R). I am writing in regard to the Clean Water Act (CWA) and its implementing regulation at 40 CFR 131, which require water quality standards to be established for all waters of the United States.

The Commission adopted CWA § 101(a)(2) uses for Coffee Creek, including Mossy Lake, in the 1970's, clearly identifying them as waters of the United States subject to the requirements of the CWA. EPA agrees with this assessment. Although the Commission revised its water quality standards in the 1980's to remove CWA § 101(a)(2) uses for these water bodies, 40 CFR 131.20(a) requires the State to re-examine any water body without these uses every 3 years, and if new information indicates that the uses specified in CWA § 101(a)(2) are attainable, to revise its standards accordingly. The EPA has previously discussed the need for appropriate designated uses to be applied to Coffee Creek and Mossy Lake with ADEQ staff and management and has provided comments on proposed revisions to Regulation 2 detailing both statutory and regulatory requirements in our letters of July 31, 2019, October 31, 2019 and September 3, 2020. The proposed revisions to Regulation 2 filed by ADEQ do not contain appropriate designated uses for Coffee Creek and Mossy Lake. The ADEQ's decision not to propose designated uses for Coffee Creek and Mossy Lake was detailed in its August 4, 2021, response to the EPA's comments on Coffee Creek and Mossy Lake, submitted to the EPA pursuant to the Informal Resolution Agreement resolving EPA Complaint No. 27-16-R6 under Title VI of the Civil Rights Act of 1964. The EPA disagrees with ADEQ's assessment that there is no need to apply appropriate designated uses to these water bodies as set out in that document. The EPA strongly recommends that the Commission designate appropriate uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River during its August 27th hearing.

If the Commission fails to adopt appropriate designated uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River, the EPA Region 6 will consider recommending that the EPA Administrator make a determination under section 303(c)(4)(B) of the Act that new water quality standards are needed to meet CWA requirements,

as requested in the petition filed on September 10, 2015, by Tulane Environmental Law Clinic on behalf of Ouachita Riverkeeper under Section 553(a) of the Administrative Procedure Act (APA).

Sincerely,

Charles W. Maguire
Director
Water Division

cc: Becky Keogh, E&E Cabinet Secretary, DEQ Director



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

January 26, 2022

Richard Roper, Chair
Arkansas Pollution Control and Ecology Commission
3800 Richards Rd,
North Little Rock, AR 72117

Dear Mr. Roper;

It is the U.S. Environmental Protection Agency's (EPA) understanding that the Division of Environmental Quality (DEQ) has filed a motion to adopt proposed changes to Rule 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, with the Arkansas Pollution Control and Ecology Commission (Commission) to be heard during the Regular Commission Meeting scheduled for January 28, 2022 (Docket #20-004-R). I am writing to reiterate the EPA's concerns with the DEQ's proposed changes to Regulation 2, as expressed in the EPA's August 23, 2021, letter to the Commission, copy enclosed.

As discussed in that letter, the revisions proposed by the DEQ do not contain appropriate designated uses for Coffee Creek and Mossy Lake, as required by the Clean Water Act (CWA) and 40 CFR Part 131. The EPA does not support the DEQ's request that the Commission grant the DEQ's motion to adopt the proposed amendments to Rule 2 and order "that DEQ shall take up the issues related to Mossy Lake and Coffee Creek in the next "triennial review." See enclosed Proposed Minute Order. As stated in EPA's August 23, 2021, letter, if DEQ and the Commission do not adopt appropriate designated uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River, EPA will consider recommending that the EPA Administrator make a finding under Section 303(c)(4)(B) of the CWA that appropriate water quality standards are needed to meet the CWA requirements for the entirety of Coffee Creek and Mossy Lake.

The EPA strongly recommends that the Commission designate appropriate uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River, as required by the CWA and federal regulations, as part of the proposed changes to Rule 2 to be considered by the Commission on January 28, 2022.

Sincerely,

Charles W. Maguire
Director
Water Division

Enclosures

cc: Lilian Sotolongo Dorka, Director, External Civil Rights Compliance Office, Office of
General Counsel, US EPA
Becky Keogh, E&E Cabinet Secretary, DEQ Director



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

January 26, 2022

Richard Roper, Chair
Arkansas Pollution Control and Ecology Commission
3800 Richards Road
North Little Rock, AR 72117

Dear Mr. Roper:

It is the U.S. Environmental Protection Agency's (EPA) understanding that the Division of Environmental Quality (DEQ) has filed a motion to adopt proposed changes to Rule 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, with the Arkansas Pollution Control and Ecology Commission (Commission) to be heard during the Regular Commission Meeting scheduled for January 28, 2022 (Docket #20-004-R). I am writing to reiterate the EPA's concerns with the DEQ's proposed changes to Regulation 2, as expressed in the EPA's August 23, 2021, letter to the Commission, copy enclosed.

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The EPA strongly recommends that the Commission designate appropriate uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River, as required by the CWA and federal regulations, as part of the proposed changes to Rule 2 to be considered by the Commission on January 28, 2022.

Sincerely,

Charles W. Maguire
Director
Water Division

Enclosures

cc: Lilian Sotolongo Dorka, Director, External Civil Rights Compliance Office, Office of
General Counsel, US EPA

Becky Keogh, E&E Cabinet Secretary, DEQ Director



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

August 23, 2021

Richard Roper, Chair
Arkansas Pollution Control and Ecology Commission
3800 Richards Rd.
North Little Rock, AR 72117

Dear Mr. Roper:

It is the Environmental Protection Agency's (EPA) understanding that the Arkansas Division of Environmental Quality (ADEQ) has filed a motion to adopt proposed changes to Regulation 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, with the Arkansas Pollution Control and Ecology Commission (Commission) to be heard during the pending August 27, 2021 hearing (Docket #20-004-R). I am writing in regard to the Clean Water Act (CWA) and its implementing regulation at 40 CFR 131, which require water quality standards to be established for all waters of the United States.

The Commission adopted CWA § 101(a)(2) uses for Coffee Creek, including Mossy Lake, in the 1970's, clearly identifying them as waters of the United States subject to the requirements of the CWA. EPA agrees with this assessment. Although the Commission revised its water quality standards in the 1980's to remove CWA § 101(a)(2) uses for these water bodies, 40 CFR 131.20(a) requires the State to re-examine any water body without these uses every 3 years, and if new information indicates that the uses specified in CWA § 101(a)(2) are attainable, to revise its standards accordingly. The EPA has previously discussed the need for appropriate designated uses to be applied to Coffee Creek and Mossy Lake with ADEQ staff and management and has provided comments on proposed revisions to Regulation 2 detailing both statutory and regulatory requirements in our letters of July 31, 2019, October 31, 2019 and September 3, 2020. The proposed revisions to Regulation 2 filed by ADEQ do not contain appropriate designated uses for Coffee Creek and Mossy Lake. The ADEQ's decision not to propose designated uses for Coffee Creek and Mossy Lake was detailed in its August 4, 2021, response to the EPA's comments on Coffee Creek and Mossy Lake, submitted to the EPA pursuant to the Informal Resolution Agreement resolving EPA Complaint No. 27-16-R6 under Title VI of the Civil Rights Act of 1964. The EPA disagrees with ADEQ's assessment that there is no need to apply appropriate designated uses to these water bodies as set out in that document. The EPA strongly recommends that the Commission designate appropriate uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River during its August 27th hearing.

If the Commission fails to adopt appropriate designated uses for Coffee Creek from its headwaters through Mossy Lake to its confluence with the Ouachita River, the EPA Region 6 will consider recommending that the EPA Administrator make a determination under section 303(c)(4)(B) of the Act that new water quality standards are needed to meet CWA requirements, as requested in the petition filed on September 10, 2015, by Tulane Environmental Law Clinic on behalf of Ouachita Riverkeeper under Section 553(a) of the Administrative Procedure Act (APA).

Sincerely,
{%img}
Charles W. Maguire
Director
Water Division

cc: Becky Keogh, E&E Cabinet Secretary, DEQ Director

To: Hill, Troy[Hill.Troy@epa.gov]; Martinez, Maria[Martinez.Maria@epa.gov]
From: Maguire, Charles[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FFBF83D93E5E4A688F150348BF84F40C-MAGUIRE, CH]
Sent: Tue 8/24/2021 12:25:29 PM (UTC)
Subject: FW: URGENT FW: Division Director Signature - Letter to AR Commission Regarding Coffee Creek/Mossy Lake
MARTINEZ 8 23 2021 APCEC Roper ltr Admin determination 8.23.21.pdf

Does David have a copy of the final letter ... I think he wanted that??? Just being sure we close the loop.

Thanks
Charles

From: Berry, Natalie <Berry.Natalie@epa.gov>
Sent: Monday, August 23, 2021 4:46 PM
To: Martinez, Maria <Martinez.Maria@epa.gov>; Wooster, Richard <Wooster.Richard@epa.gov>
Cc: Maguire, Charles <maguire.charles@epa.gov>
Subject: FW: URGENT FW: Division Director Signature - Letter to AR Commission Regarding Coffee Creek/Mossy Lake

Letter signed as requested.

From: Maguire, Charles <maguire.charles@epa.gov>
Sent: Monday, August 23, 2021 4:40 PM
To: Berry, Natalie <Berry.Natalie@epa.gov>
Cc: Hill, Troy <Hill.Troy@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Wooster, Richard <Wooster.Richard@epa.gov>
Subject: Re: URGENT FW: Division Director Signature - Letter to AR Commission Regarding Coffee Creek/Mossy Lake

Reviewed and approved

Sent from my iPhone

On Aug 23, 2021, at 4:39 PM, Berry, Natalie <Berry.Natalie@epa.gov> wrote:

Hello Charles,

Please review/approve and I will upload signature. Thanks!

From: Martinez, Maria <Martinez.Maria@epa.gov>
Sent: Monday, August 23, 2021 4:30 PM
To: Berry, Natalie <Berry.Natalie@epa.gov>
Cc: Maguire, Charles <maguire.charles@epa.gov>; Hill, Troy <Hill.Troy@epa.gov>; Wooster, Richard <Wooster.Richard@epa.gov>
Subject: Division Director Signature - Letter to AR Commission Regarding Coffee Creek/Mossy Lake

Natalie,

We would appreciate your assistance in getting the attached letter signed by Charles, after your processing. Due to the priority nature of the letter and the eRouting link issue we encountered today, we were needing the letter processed through email. The letter has received input by the RA's Office and ORC already.

Thank you for your assistance.

Maria
5-2230
<mime-attachment>

To: Hill, Troy[Hill.Troy@epa.gov]
From: Wooster, Richard[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=63ADFF6865C44B8D8BE9E40C69E929C2-WOOSTER, RICHARD]
Sent: Tue 8/24/2021 12:38:03 PM (UTC)
Subject: The letter
MARTINEZ 8 23 2021 APCEC Roper ltr Admin determination 8.23.21.pdf

rich

Richard A. Wooster
Chief
Water Quality Protection Section (WDPQ)
USEPA Region 6, Water Division
1201 Elm Street, Dallas, TX 75202
Cell: (817) 223-1924

From: Berry, Natalie <Berry.Natalie@epa.gov>
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Subject: FW: URGENT FW: Division Director Signature - Letter to AR Commission Regarding Coffee Creek/Mossy Lake

Letter signed as requested.

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Sent: Monday, August 23, 2021 4:40 PM
To: Berry, Natalie <Berry.Natalie@epa.gov>
Cc: Hill, Troy <Hill.Troy@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Wooster, Richard <Wooster.Richard@epa.gov>
Subject: Re: URGENT FW: Division Director Signature - Letter to AR Commission Regarding Coffee Creek/Mossy Lake

Reviewed and approved

Sent from my iPhone

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From: Martinez, Maria <Martinez.Maria@epa.gov>
Sent: Monday, August 23, 2021 4:30 PM
To: Berry, Natalie <Berry.Natalie@epa.gov>
Cc: Maguire, Charles <maguire.charles@epa.gov>; Hill, Troy <Hill.Troy@epa.gov>; Wooster, Richard <Wooster.Richard@epa.gov>
Subject: Division Director Signature - Letter to AR Commission Regarding Coffee Creek/Mossy Lake

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Thank you for your assistance.

Maria

5-2230

<mime-attachment>

From: Gromer, David [Gromer.David@epa.gov]
Sent: 10/3/2019 2:20:55 PM
Subject: News Clips

REGION 2 NEWS

[EPA Told to Dial Back Upwind Pollution to Clear Air in Downwind States Like NJ](#) (NJ SPOTLIGHT; October 3, 2019)

A federal appeals court has struck down an Environmental Protection Agency rule that would have allowed upwind states to delay curbing emissions that foul air quality in downwind states like New Jersey.

[New Jersey scores clean-air victory in pollution battle versus Trump administration](#) (NORTH JERSEY RECORD; October 3, 2019)

States whose air pollution blows into New Jersey and contributes to high smog levels will not be able to delay making cuts to their harmful emissions, particularly from coal-burning power plants, a federal appeals panel [ruled Tuesday](#).

[Toxic lead, scared parents and simmering anger: A month inside a city without clean water](#) (THE WASHINGTON POST; October 3, 2019)

The tap water ran over Yvette Jordan's hands as she washed a red plastic cup, then a green cup and then a white ceramic bowl. In the south Newark home where she has lived since 1989, Jordan moved a case of 24 plastic water bottles away from a stack next to the kitchen sink.

[Murphy panel ordered to ensure Oyster Creek decommissioning won't be dangerous](#) (ASBURY PARK PRESS; October 3, 2019)

Gov. Phil Murphy, heeding the requests of [environmentalists and concerned community members](#), Wednesday announced the creation of a safety advisory panel to oversee the decommissioning of Oyster Creek nuclear power plant.

[WAPA confirms link between outages, fuel system](#) (VIRGIN ISLANDS DAILY NEWS; October 3, 2019)

V.I. Water and Power Authority officials confirmed to lawmakers this week that the territory's rampant power outages are linked to the fuel system for two of its APR-leased generators at the Randolph Harley Power Plant on St. Thomas.

[Newark Water Crisis: City Takes Big Step To 'Solve Own Problems'](#) (PATCH; October 2, 2019)

An amended lease agreement with the Port Authority of NY/NJ will raise \$155 million to help Newark fight its water woes, city officials announced.

[CITY OF NEWARK HOSTS "STATE OF WATER" AT NEW JERSEY PERFORMING ARTS CENTER](#) (INSIDER NJ; October 2, 2019)

The City of Newark hosted a "State of Water" town hall on Wednesday, October 2 at the New Jersey Performing Arts Center (NJPAC). Residents in attendance from across the city learned more about having their lead service line replaced or how they can volunteer to inform their neighbors about available resources.

[Senators urge 'conditional' state approval of gas pipeline](#) (NEWSDAY; October 2, 2019)

Six Long Island Democratic state senators on Wednesday urged the state's top environmental official to approve a contested natural gas pipeline "on an emergency basis" if certain conditions are met, just days after Gov. Andrew M. Cuomo publicly expressed his opposition to it.

[Long Island lawmakers to propose tougher anti-dumping rules](#) (NEWSDAY; October 2, 2019)

Long Island state lawmakers introduced sweeping legislation Wednesday that would make it easier to prosecute and punish individuals suspected of illegally dumping hazardous and toxic materials while better protecting the region's sole-source aquifer.

Ocean City, nearby shores to get \$32.5M widening (CLIMATEWIRE; October 2, 2019)

Three southern New Jersey beaches will be widened under a new contract.

6 N.J. towns to be sprayed to combat potentially-deadly mosquito-borne illness (NJ ADVANCE MEDIA; October 2, 2019)

Portions of six towns in Union County are set to be sprayed by helicopter after a person and several animals contracted Eastern Equine Encephalitis, a potentially deadly mosquito-borne illnesses.

DRINKING WATER: N.J. tallies 160K lead pipes in homes, businesses (GREENWIRE; October 2, 2019)

New Jersey's first attempt to put together a comprehensive inventory of the type of lead pipes that caused a drinking water crisis in the state's biggest city is underway and so far has counted around 160,000 of the potentially toxic pipes at homes and businesses across the state, according to public records.

State creates oversight panel for Oyster Creek decommissioning (PRESS OF ATLANTIC CITY; OCTOBER 2, 2019)

A panel of state officials will assist in evaluating the decommissioning process at the former Oyster Creek nuclear plant, the head of the Department of Environmental Protection said Wednesday.

Mosquito spraying tonight in Hammonton, Northfield, Pleasantville (PRESS OF ATLANTIC CITY; October 2, 2019)

The Atlantic County Office of Mosquito Control will be doing aerial sprays against mosquitos in portions of Hammonton, Northfield and Pleasantville between 5 p.m. and 7 p.m. Wednesday, weather permitting.

Long Island lawmakers to propose tougher anti-dumping rules (NEWSDAY; OCTOBER 2, 2019)

Long Island state lawmakers introduced sweeping legislation Wednesday that would make it easier to prosecute and punish individuals suspected of illegally dumping hazardous and toxic materials while better protecting the region's sole-source aquifer.

Garden Detective: Houseplants that clean the air (NEWSDAY; OCTOBER 2, 2019)

Like pets, indoor plants have long been known to reduce stress. The findings aren't anecdotal, either.

NATIONAL

Broadcast

CNN: Interview with Administrator Wheeler on presidential impeachment inquiry

<http://mms.tveyes.com/MediaCenterPlayer.aspx?u=aHR0cDovL2l1ZGllhY2VudGVyLnR2ZXllcy5jb20vZG93bmxxvYWRnYXRld2F5LmFzcHg%2FVXNlcklEPTc4NDkzNiZNRElEPTcyMjk5Mjk5Jk1EU2VIZD01NDUyJlR5cGU9TWVkaWE%3D>

C-SPAN: President Trump on San Francisco

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NBC: Administrator Wheeler remarks on the Flint water crisis

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KPAX: Berkeley pit Cleanup

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Air

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[Trump isn't wrong about California's smog, but environmentalists say he's not helping](#)

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[While Ohio analyzes state's water for harmful chemicals, Cleveland already knows what's in its supply -- nothing](#)

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FULL ARTICLES

REGION 2

NJ SPOTLIGHT

[EPA Told to Dial Back Upwind Pollution to Clear Air in Downwind States Like NJ](#)

Officials have long argued unclean air from neighboring states plays significant role in New Jersey's struggle to reduce smog

By Tom Johnson

October 3, 2019

A federal appeals court has struck down an Environmental Protection Agency rule that would have allowed upwind states to delay curbing emissions that foul air quality in downwind states like New Jersey.

The decision by the D.C. Circuit Court of Appeals is significant for New Jersey, a state that has never achieved the federal health standard for ground-level ozone or smog. That's because officials here have long argued one-third of smog-forming pollution is coming from coal-fired power plants in Illinois, Indiana, Kentucky, Michigan, Ohio and West Virginia.

The federal agency had finalized the rule at the end of 2018 that eased requirements to clamp down on pollutants contributing to smog, leading New Jersey, five other states and New York to challenge the decision. The case was joined by Earthjustice, representing several environmental groups, and others.

"We're thrilled to see yet another win in our fight to prevent the Trump administration from dismantling environmental protections," said New Jersey Attorney General Gurbir Grewal. "Although New Jersey has done its part to protect our residents and our children from ozone pollution, this dangerous pollution is still coming from other states — and the federal government has refused to do anything about it."

Plugging the ozone pipeline

The decision will require EPA to place tighter limits on industrial and power-plant sources of air pollution. Currently, 49 counties with more than 36 million people in the Eastern U.S. and Texas suffer from ozone levels that exceed federal air-quality standards.

Ozone exposure at this level and below can result in chronic respiratory diseases like asthma and scarring of the lungs, as well as premature death, and is particularly harmful to children. The areas of the country that suffer from unhealthy air due to cross-state pollution are disproportionately home to communities of color.

"It is an important victory because it shows the Trump administration cannot arrogantly change environmental standards that affect our health," said Jeff Tittel, director of the New Jersey Sierra Club, whose national organization was a party to the lawsuit. "This is a victory for clean air and our lungs."

"This is another big win for public health and the environment," said Earthjustice attorney Neil Gormley, the lead lawyer on the case. "Now it's past time for EPA to stop stalling and do its job."

Simmering ozone soup

Ozone is formed when emissions from vehicles, power plants and industrial sources cook together on hot summer days. So far this year, New Jersey has experienced 12 days when the national ambient air quality standard for ozone was exceeded, although on a handful of these days, violations occurred in several locations around the state, according to the Department of Environmental Protection's web page.

New Jersey typically has more-stringent air pollution laws than neighboring states, a criticism frequently leveled by business lobbyists who say an uneven playing field makes it more difficult to compete with rivals in other states.

Since Gov. Phil Murphy took office, New Jersey has been very aggressive in filing lawsuits challenging the rollback of assorted environmental rules. It contested changes in the federal endangered species law just last week.

Last year, New Jersey joined other states in challenging the repeal of a law limiting the production of super-polluting trucks, a decision reversed by the EPA after the lawsuit was filed.

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NORTH JERSEY RECORD

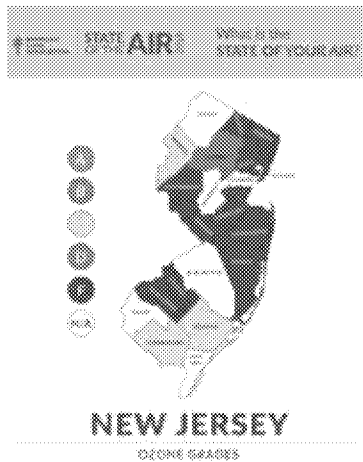
[New Jersey scores clean-air victory in pollution battle versus Trump administration](#)

By Scott Fallon

October 3, 2019

States whose air pollution blows into New Jersey and contributes to high smog levels will not be able to delay making cuts to their harmful emissions, particularly from coal-burning power plants, a federal appeals panel ruled Tuesday.

The D.C. Circuit Court of Appeals struck down a portion of a rule by the Trump administration that had removed a 2021 deadline for upwind states to make reductions.



Most New Jersey counties continue to fail for high ozone - the key ingredient of smog, which can cause difficulties for people with asthma and other ailments. (Photo: American Lung Association)

The challenge was brought by several Eastern states, including New Jersey, much of which continues to receive failing grades for smog.

"We sued the federal government in court to require action to protect us from these out-of-state polluters, and with today's victory, the federal government will have no choice but to act," Attorney General Gurbir Grewal said in a statement.

The court had already ruled that the federal Clean Air Act requires upwind states to make such reductions. Tuesday's ruling would ensure that upwind states reduce their pollution so downwind states like New Jersey can meet certain clean-air benchmarks by 2021.

Prevailing winds send pollution into New Jersey from coal-burning power plants in Midwest states, including Pennsylvania and Ohio.

New Jersey ranked 14th in the nation in asthma cases in 2017, with about 600,000 residents who suffer from the disease, according to the latest data from the federal Centers for Disease Control and Prevention.

Among environmentalists who applauded the appeals panel decision is Trisha Dello Iacono, national field manager for Moms Clean Air Force, who lives with her three children in Gloucester County. The county received an F last year from the American Lung Association for its smog levels.

"This ruling goes a long way to recognize that air pollution knows no boundaries, and that our Environmental Protection Agency has a duty to protect us all from dangerous air pollution," she said Wednesday. "This decision addresses the dire need for 'upwind' states to take responsibility for their contribution to the cross-state pollution that impacts New Jersey."

North Jersey and New York City ranked as the 10th-worst metropolitan area in the U.S. for ozone levels, the main ingredient in smog that can trigger asthma attacks, according to a 2018 report by the American Lung Association.

Much of the Jersey Shore and the South Jersey counties outside Philadelphia also received failing grades over a three-year period from 2014 to 2016, the latest data show.

New Jersey has made progress in curbing its own emissions. Three major coal-fired power plants closed in recent years, including the B.L. England plant in Cape May County this year.

About one-third of New Jersey's air pollution comes from out of state, said Jeff Tittel, director of the New Jersey Sierra Club who applauded the ruling.

"Although New Jersey has done its part to protect our residents and our children from ozone pollution, this dangerous pollution is still coming in from other states — and the federal government has refused to do anything about it," Grewal said.



The New York metropolitan area including North Jersey has some of the nation's worst smog problems, according to the American Lung Association. Several other parts of New Jersey including the Shore area and the suburbs of Philadelphia also had poor air quality. (Photo: terrababy / Getty Images)

There have been improvements in recent years, as some Midwest power companies shuttered heavy-polluting coal-fired plants because natural gas is so cheap and the costs to retrofit old coal-burning plants are high. Federal regulations and lawsuits by New Jersey and other states have also prodded plants to reduce emissions.

A major polluter in New Jersey — the Portland Generating Station on the banks of the Delaware River in Pennsylvania — stopped burning coal in 2014.

A 2017 study by Lehigh University showed that New Jersey mothers living as far as 20 to 30 miles downwind from the Portland Generating Station had a greater chance of having babies with low birth weight.

Despite the progress, scientists say a warming planet will likely produce more days with bad air quality.

New Jersey has experienced an increase in temperature of at least 3 degrees Fahrenheit over the past century, according to the National Oceanic and Atmospheric Administration. Ten of the Garden State's warmest years on record have come since 1990.

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THE WASHINGTON POST

Toxic lead, scared parents and simmering anger: A month inside a city without clean water

By Marisa Iati

October 3, 2019

The tap water ran over Yvette Jordan's hands as she washed a red plastic cup, then a green cup and then a white ceramic bowl. In the south Newark home where she has lived since 1989, Jordan moved a case of 24 plastic water bottles away from a stack next to the kitchen sink.

Her husband, Frank Jordan, was cooking pork chops this summer when he turned on the faucet, forgetting that elevated lead levels in the city's water meant residents had to cook with bottled water. Yvette saw the running faucet and intercepted her husband before the water touched their dinner.

When a pediatrician from Flint, Mich., visited her home to discuss Newark's parallel water crisis, Yvette Jordan remembers the doctor saying it would take her family a while to become inculcated with the habit of using bottled water. Jordan didn't see that as an adequate solution.

"I don't want to be inculcated," she said on a Saturday in September. "I want it fixed."

The problem inched closer to a permanent resolution last week, when Newark and New Jersey officials announced residents could return to drinking their tap water with city-distributed water filters. Testing completed in September of more than 300 filters showed 97 percent effectively reduced lead levels below 10 parts per billion, which is less than the federally mandated "action level" of 15 parts per billion.

Activists, however, want to know why much of the state's largest city had to rely on bottled water in the first place. Newark first became aware of elevated lead levels in 2017 after the city changed the water's acidity, which may have made it more corrosive and caused lead from the pipes to enter the water supply. Two years later, lead levels reached a crisis point that kept about 15,000 households from drinking their tap water for more than a month.

"Why did this happen, how did this happen and could it have been prevented?" Anthony Diaz of the Newark Water Coalition advocacy group asked as he distributed water in the back of a church rectory. "Those are the questions we would like answered."

In a crisis that contains echoes of the water-system failure in Flint, Newark residents were urged this summer to use bottled water for drinking, cooking and brushing their teeth after officials said city-provided filters may not have been effectively removing lead from the tap water. Starting on Aug. 12, residents cycled through four city-operated water distribution sites and countless other privately operated centers to stock up on free water each week.

Public-health experts consider any amount of lead to be dangerous, but the law requires that a city improve its corrosion controls if a certain number of homes test above 15 parts per billion. One water sample in Newark from May 2018 measured 182 parts per billion. Prolonged exposure to lead can cause high blood pressure, kidney damage and stillbirths. Young children who are exposed to lead are particularly likely to experience problems with their brain development and nervous systems.

Diaz said he worries about lead's potential effects on the city's students, who could face permanent cognitive issues. He said he's particularly concerned about some researchers' hypothesis that lead exposure could be linked with a propensity for violence, considering that Newark already deals with a high homicide rate. Lead also can impair academic performance and add to the achievement gap that commonly exists between affluent and impoverished students.

"How it changed the trajectory of the development of not only individuals, but the City of Newark — We haven't really felt those ramifications yet, and no one's really talking about it," Diaz said.

Was the city aggressive or deficient?

In Newark, officials have said only homes served by one of the city's two water treatment plants are affected by elevated lead levels. Corrosion control chemicals in the western half of the city have failed to keep lead in the water service lines from leaching into the water supply.

Even after six weeks of bottled-water distribution, residents and activists in September spoke of widespread confusion about which homes were affected by the lead and who was eligible to pick up water from the city. Many families were rationing water to get through the week, while activists tried to make people understand that boiling their tap water would not eradicate the problem.

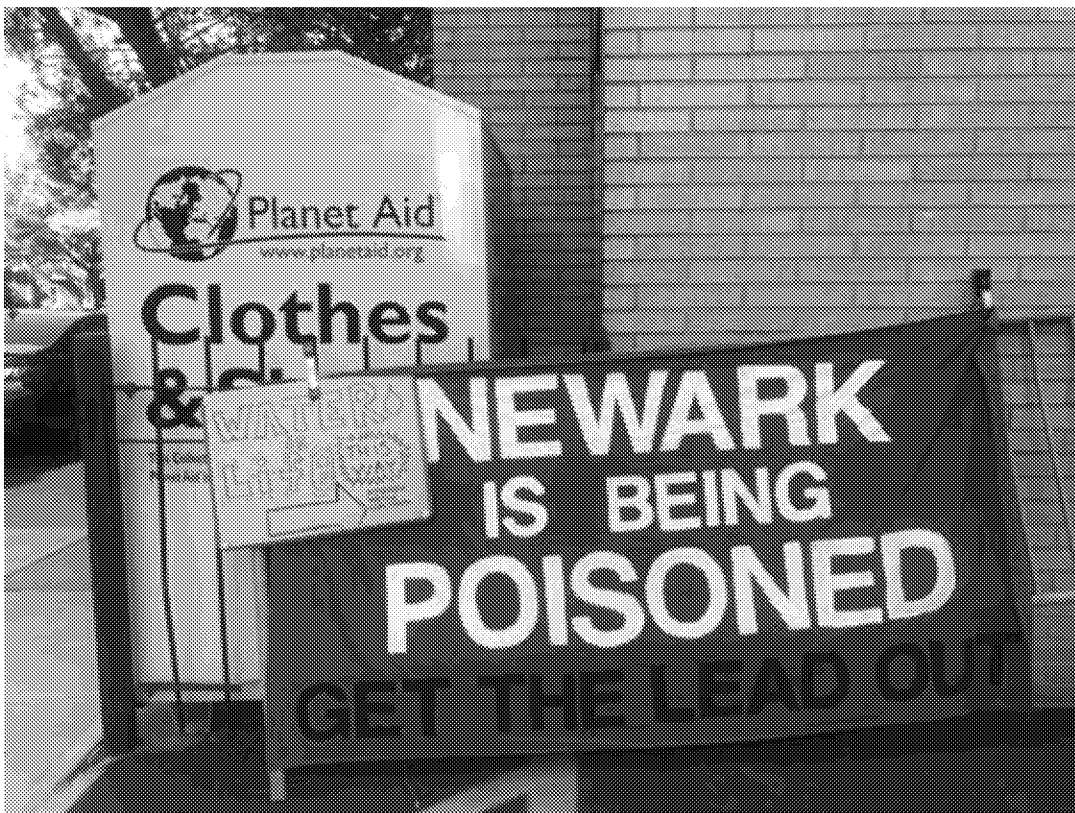
As Bessie McKnight waited to pick up a case of water outside Boylan Recreation Center on a Friday in September, she said she was grateful the bottled water provided a safe drinking option for her four grandchildren. Still, she said it was difficult not to be able to turn on her faucet whenever she needed water.

"It is very difficult because every little drop counts," McKnight, 56, said. "I try not to waste it."

The city has not allowed reporters inside its water distribution sites, although they are in public buildings.

In the eyes of Bishop Jethro James Jr. of the city's Paradise Baptist Church, city and state officials would have responded more aggressively to the lead crisis had it not been in a predominantly black and low-income city.

"If this was a neighborhood of predominantly wealthy Caucasian people, there would be jackhammers going right now," James said.



A sign advocating for an end to Newark's lead crisis hangs outside St. Lucy's Church, where the Newark Water Coalition distributes cases of water on Saturdays. (Marisa Iati/The Washington Post)

In June 2018, the environmental advocacy group Natural Resources Defense Council filed a lawsuit against Newark alleging that the city failed to provide clean water for its residents and misled them into thinking the water was safe. Newark is fighting the lawsuit in court, and Mayor Ras Baraka (D) told The Washington Post that the NRDC's claims were "unscientific and not factual."

Although Newark is often mentioned alongside Flint, Dimple Chaudhary, senior attorney at NRDC, said comparisons between the cities are difficult because researchers do not know how high Flint's lead levels got or for how long they were elevated. In both Newark and Flint, Chaudhary said, the crises began with a failure to properly treat the water to control lead release.

Both cities also inadequately communicated with residents about the lead, Chaudhary said. Flint has been replacing its 18,000 lead service lines since 2016 and is in the final stages of the project.

Baraka has repeatedly rejected comparisons with Flint and said Newark acted to control the high lead levels as soon as officials knew there was a widespread problem. In May, the city started using a new corrosion control treatment that was expected to take several months to start working.

Officials in August announced a \$120 million county-backed bond to replace the city's 18,000 lead service lines in the next 24 to 30 months. A new lease agreement with the Port Authority of New York and New Jersey also will provide \$155 million, the city said this week. As residents now readjust to drinking filtered tap water, the state will pay for a program to help residents install their filters and test water samples from individual homes.

"I think that we are moving very aggressively," Baraka told The Post. "And I think that we are going to be the only city in the country that has tried to fix this entire problem solely on their own."

To Yvette Jordan, the city's efforts have not been aggressive enough. For weeks, bottled water was placed strategically throughout her home: Five cases in the kitchen and seven next to the staircase, plus a bottle in the upstairs bathroom and a bottle at each of three water bowls for the couple's dog and two cats. Sometimes Jordan and her husband picked up cases from city- or church-run distribution sites. Other times, they bought water with their own money.

The Jordans said they were frustrated that the city did not better communicate with residents about the crisis, like by holding more training sessions to educate people about the lead and the steps they should take. The city hosted a "state of water" town hall Wednesday and has held virtual information sessions about the crisis.

Yvette Jordan, a history teacher at Newark's Central High School, talked with students about the lead issue in her social-justice class while city residents were urged to drink only bottled water. Some students told her they sometimes drank bottled water and other times drank tap water. Other students said they had been replacing water with juice or Kool-Aid — but they often combined their Kool-Aid mix with water from the faucet.

Jordan, 59, is a member of the Newark Education Workers Caucus, a social-justice-focused subset of the city's teacher's union that has joined the NRDC's lawsuit against the city.

Baraka, the mayor, has called the NRDC outside agitators who are needlessly sowing panic among residents. Jordan said Baraka's words remind her of the Rev. Martin Luther King Jr.'s assertion in "Letter from a Birmingham Jail" that labeling a group as "outside agitators" dismisses attempts to rectify injustice.

"It's the same thing now," Jordan said. "NRDC and NEW Caucus are not outside agitators. There is injustice here, and that's why we are doing what we're doing."

'A slap in the face'

In a basement lacking air conditioning at St. Lucy's Church in the city's Central Ward, Lenny Thomas sits at a fold-up table for six hours on Saturdays and waits for residents to stop by to pick up bottled water.

"Would you like an option?" Thomas said to a woman on a Saturday in September as she surveyed boxes of water stacked against the wall. "You can have one of those cases there, which is approximately three gallons of water, or you can have that one over there that says 'Poland Spring.' It has six gallons of water."

"I'll take a case," the woman said as she lifted a 24-pack of water bottles from the cases branded with the logos of Giant, Market Pantry, Shop Rite and Nestle.

"There you are!" Thomas, 72, exclaimed as the resident walked out.

As part of the Newark Water Coalition, Thomas and other volunteers have been distributing water to about 300 residents every week. They advocate for increased education about the water crisis, more treatment options for people affected by lead, and legislation to remove all the lead service lines in New Jersey. The group also wants the city to more clearly identify how this problem arose and to hold someone responsible.



Anthony Diaz of the Newark Water Coalition loads a handcart with water during one of the organization's weekly water distribution events at St. Lucy's Church. (Marisa Iati/The Washington Post)

The city first announced in September 2017 that it had exceeded the federal “action level” for lead and would begin taking inventory of Newark’s lead service lines and replacing them. The city again exceeded acceptable lead levels in December of that year.

As Newark again exceeded the action level for lead in June 2018, city officials repeatedly insisted the water was safe to drink. The city’s 2017 water quality report led with a statement from Baraka that Newark had “some of the best water in the State of New Jersey.”

“Many of you have heard or read the outrageously false statements about our water but please know that the quality of our water meets all federal and state standards,” Baraka wrote. “The only high lead readings were taken inside of older (pre-1986) one- and two-family homes that have lead pipes leading from the City’s pure water in these structures.”

Baraka told The Post that language in that document and others indicating the water was safe was meant to be considered alongside later mentions that some homes with lead service lines could have elevated lead levels. Still, he said, he “could see that it could have been clearer.”

The Environmental Protection Agency in October 2018 notified the state that Newark’s corrosion-control treatment was no longer keeping lead out of the water. The city began distributing filters to homes within days. Baraka said the city had not distributed filters earlier because officials were unaware the lead was a widespread problem and not affecting just a handful of older homes.

Newark then started handing out bottled water in August when the EPA urged it to do so. An ordinance passed in September will allow city officials to come onto people’s properties to replace their lead service lines with or without their permission — a move the mayor said protects renters from landlords who may not feel compelled to sign up for service line replacement.

As Amber Harrison and her husband were about to close on the purchase of their north Newark home last year, they learned the house was serviced by lead pipes. Harrison, 34, said she felt it was too late to back out of the sale, and the city assured her it was working to replace Newark’s lead service lines.

Harrison, a teacher at a New York City charter school, said she immediately started buying bottled water for her 9-year-old son, Dylan. Although officials have said residents can safely shower and wash dishes with unfiltered tap water, Harrison said she worries using tap water for those tasks still could cause harm. She and her husband have worked hard to make Dylan's childhood easier than their own, Harrison said, and she's disheartened she has to fight for him to have clean drinking water.

"One thing we made a pact on is ensuring that our kid is able to have the necessities that weren't necessarily in reach for us growing up," she said. "And it's almost kind of like a slap in the face."

Harrison said she's also concerned that her father-in-law, who in June was diagnosed with multiple myeloma, may have contracted the cancer from drinking the city's unfiltered tap water for the past year. He has Type 2 diabetes, she said, and drinks more water than many people.

City officials long have talked about the "renaissance" they say is sweeping over Newark as a wave of development floods downtown. But Diaz, of the Newark Water Coalition, said the city's handling of the lead issue gives him little confidence that the administration can fix other major issues central to the city's revival.

"When you have a population that's focused on crime, unemployment, getting a job, keeping food on the table, keeping the lights turned on, they can't take on another issue," said Diaz, 33. "Life is already so hard for them, and there's already this level of trauma in this city. And you just add something else to it."

During a quiet moment at a water distribution site last month, Diaz loaded cases of water bottles onto a red hand truck to move them closer to the room's entrance.

"I'm going to start having nightmares about this," Diaz joked as he tipped the hand truck onto its back wheels.

Then he pushed the cart toward the door, unloaded the water bottles and brought the hand truck back across the room for more.

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ASBURY PARK PRESS

Murphy panel ordered to ensure Oyster Creek decommissioning won't be dangerous

By Amanda Oglesby

October 3, 2019

Gov. Phil Murphy, heeding the requests of environmentalists and concerned community members, Wednesday announced the creation of a safety advisory panel to oversee the decommissioning of Oyster Creek nuclear power plant.

New Jersey Department of Environmental Protection Commissioner Catherine R. McCabe will head the new Oyster Creek Safety Advisory panel, which will also include members of the New Jersey State Police, the Office of Homeland Security and Preparedness, and the Board of Public Utilities.

"The Oyster Creek Advisory Panel will enhance existing oversight to ensure compliance with regulatory requirements and provide assurances to the public that the proper protocols for the decommissioning are in place," Gov. Phil Murphy said in a news release. "Providing the public with an opportunity to participate in the robust public input process is critical to ensuring transparency during the decommissioning process."

The Nuclear Regulatory Agency also oversees the removal of radioactive material and spent nuclear fuel from the now defunct power plant. Oyster Creek Generating Station, which is located off Route 9 in southern Lacey, ceased power production in September 2018.

Holtec International, a firm that manufactures and designs spent fuel storage casks and other power plant equipment, purchased the 50-year-old facility and its nearly \$1 billion decommissioning trust fund in July from Exelon Generation.

"This (safety advisory panel) is a welcomed step to ensure the people of Ocean County have a real voice in the decommissioning of the Oyster Creek facility," U.S. Rep. Andy Kim, of New Jersey's 3rd Congressional District, said in a statement. "I look forward to working with the board as it's established to ensure all parties engaged in this process are accessible and accountable to our communities."

Some Lacey residents have called for the creation of such an oversight panel for more than a year.

Ron Martyn, 78, of Lacey's Sea Breeze age-restricted community is one of them. He welcomed the news.

"I think it's a great idea and it's just in time," Martyn said.

With the creation of the governor's safety advisory panel, Martyn said he hoped regulators would recognize another oversight group, one that would include residents who live around Oyster Creek.

He has reason to be hopeful.

On Thursday, the Nuclear Regulatory Commission will hold a meeting in Stafford to discuss establishing a local community advisory board for the plant. The meeting will begin at 6 p.m. and be held at the Holiday Inn Manahawkin at 151 Route 72 West.

Jeff Tittel, director of the New Jersey Sierra Club, an environmental advocacy group, said the governor's advisory panel should have included concerned residents, environmentalists and scientists, not just officials affiliated with government.

Tittel said such an independent group is needed to ensure that Holtec does not "cut corners" during the decommissioning process, because the company's Oyster Creek budget is limited by the size of the plant's decommissioning trust fund.

"I think they need to be more open and more transparent and bring in more people that have an independent perspective," Tittel said.

Environmental group Clean Water Action also cited concerns about Oyster Creek, including the limited liability corporate structures of Holtec's subsidiary companies that are now in charge of the plant. Members of the environmental group also questioned impending decreases in plant security and long term resilience of the fuel storage casks.

Janet Tauro, chairwoman of Clean Water Action New Jersey, said the creation of these advisory boards are welcome steps in helping the public get answers.

"There are too many safety concerns and questions surrounding the current decommissioning of Oyster Creek," she said in a statement.

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VIRGIN ISLANDS DAILY NEWS

[WAPA confirms link between outages, fuel system](#)

AJ Rao

October 3, 2019

V.I. Water and Power Authority officials confirmed to lawmakers this week that the territory's rampant power outages are linked to the fuel system for two of its APR-leased generators at the Randolph Harley Power Plant on St. Thomas.

WAPA Executive Director Lawrence Kupfer, appearing before a Senate Committee of the Whole on Tuesday, testified that the fuel system for units 26 and 27, which uses liquid fuel oil to generate power, does not respond well to “system instability events.”

In other words, since the flow of liquid fuel oil must be precisely controlled and supplied within a narrow pressure range, any unforeseen event that pushes operation outside of the allowable range causes the generator to trip in order to protect against damage, according to Kupfer.

Moreover, if a unit trips and the remaining units are not able to stabilize and pick up the load, then the entire power plant can lose generation capacity, as is often the case at the Harley Power Plant.

Kupfer said WAPA, with the assistance of the New York Power Authority, APR and Wartsila, has developed short- and long-term recommendations to improve the fuel system and find ways to “improve current load shedding schemes” in order to ensure system stability during similar future events.

Short-term fixes like improving the fuel supply to units 26 and 27 are expected to be done by the end of the month, while long-term plans like improving load shedding, protecting against future disturbances and improving generation overall could take up to a year.

“There are inherent challenges in implementing solutions on a system that is in continuous operation in order to meet daily electrical needs,” Kupfer said. “We must again remind everyone that WAPA’s power generating facilities are not interconnected to a grid with other power producers. WAPA operates two independent, stand-alone power plants on two islands.”

Kupfer said this is significant as power systems in the U.S. and other jurisdictions are interconnected with multiple power plants, which inherently adds to system reliability and stability.

“It will take time to implement long-term solutions,” he added. “Beyond the long-term plan, more permanent system reliability will be realized through a Housing and Urban Development grant, which will add four new and efficient generator units and battery storage at the Harley facility. The monies have already been allocated and this project is currently out to bid. These generators and batteries should be online by the end of 2020. These generators will help to further improve reliability and reduce rates.”

Currently, at the St. Thomas plant, WAPA owns three Wartsilla units at 7 megawatts each, as well as Unit 15, a General Electric turbine with 20 megawatts of power.

The utility also rents three units from APR — Unit 25 with 20 megawatts of power, and Units 26 and 27, both with 25 megawatts of power each.

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PATCH

Newark Water Crisis: City Takes Big Step To 'Solve Own Problems'

A deal with the Port Authority of NY/NJ will raise \$155 million to help Newark combat its water woes.

By Eric Kiefer

October 2, 2019

An amended lease agreement with the Port Authority of NY/NJ will raise \$155 million to help Newark fight its water woes, city officials announced.

On Tuesday, Mayor Ras Baraka hosted a press conference at City Hall to release details about a reworked deal with the Port Authority, which maintains several transportation facilities in the Brick City, including Newark Liberty International Airport and Port Newark.

Port Authority officials have agreed to give Newark an extra \$5 million annually for the duration of the lease, which will run for 30 years. Newark already receives \$110 million per year from the agency, CBS New York reported.

Newark will also get a \$5 million upfront payment as part of the reworked lease agreement, Baraka said.

Baraka told CBS that city officials plan to "use as much of it as we can if not all" of the new funds for debt service towards a \$120 million loan that Essex County recently helped it to secure. That loan is turbocharging the city's efforts to replace about 18,000, privately owned lead service lines, the main suspected culprit behind the contamination.

"We have been in talks with the Port Authority over our lease agreement and, clearly, this money comes at a fortuitous time for us," Baraka stated.

The mayor said officials will also be able to add the new funds to the municipal budget to "support city services" or "make some capital improvements."

"I've always said the ports and airport are assets for this city that we could better utilize," Baraka added. "This money is another example of this city using its own resources to solve our own problems."

Jeff Tittel of the New Jersey Sierra Club applauded the new funding influx, calling it a "step in the right direction." But he added that there is still a "public health emergency" in Newark, as well as other cities across the state.

"This is not just happening in Newark, we have incidences of lead happening across the state in areas like Paterson, Camden, Morristown, and in 30 towns in Bergen County," Tittel said. "We need a minimum of \$2.3 to \$8 billion statewide to fix our lead problem."

Newark city officials are holding a "state of water" town hall at the Prudential Hall of the New Jersey Performing Arts Center (NJPAC) on 1 Center Street at 6 p.m. on Wednesday, Oct. 2.

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INSIDER NJ

CITY OF NEWARK HOSTS "STATE OF WATER" AT NEW JERSEY PERFORMING ARTS CENTER

October 2, 2019

The City of Newark hosted a "State of Water" town hall on Wednesday, October 2 at the New Jersey Performing Arts Center (NJPAC). Residents in attendance from across the city learned more about having their lead service line replaced or how they can volunteer to inform their neighbors about available resources.

"The City of Newark is committed to ensuring all of our residents have access to clean, safe water," said Mayor Ras J. Baraka. "We have launched a first-of-its-kind initiative to expeditiously replace approximately 18,000 lead service lines at no cost to residents. Today's panel discussion facilitated an important conversation with residents and experts about how the City has made significant progress in reducing the risks of lead and is putting residents first. We look forward to getting more volunteers out in our community to inform and sign up neighbors for replacing their lead service lines."

Mayor Ras J. Baraka participated in a productive panel discussion regarding Newark's water. The discussion was moderated by Public Policy Executive Richard W. Roper. Panelists included Commissioner Catherine McCabe, New Jersey Department of Environmental Protection; Chris Sturm, Managing Director of Policy and Water at New Jersey Future; Kareem Adeem, Acting Director of Water and Sewer Utilities for the City of Newark; Shereef Elnahal, MD, President and CEO of University Hospital; Hanan Tanous, MD, Associated Professor, Pediatrics and Medical Director of NJ WIC program; and Lourdemillard Bellevue, MD, New Beth Israel Medical Center. Questions were taken from residents in the audience as well as residents who submitted questions in advance by video, email or social media.

"Preliminary results from our water team study show that the filters the City of Newark is distributing are reliably removing lead from the residents' drinking water," said New Jersey Department of Environmental Protection

Commissioner Catherine R. McCabe. “Testing shows that flushing before filtering increases the reliability of the filters to more than 99 percent, which is why we recommend that Newark residents flush the water for at least five minutes in the morning or after being away from home for more than six hours. In addition, we are pleased to work with the city on a program that will assist the City of Newark in recruiting, training, organizing and supporting a volunteer force that will install water filters, educate residents on proper filter use, and collect water samples.”

During the event, panelists discussed how the City of Newark is a model for municipalities across the nation with lead issues. On Monday, October 7, the City of Newark will resume its comprehensive water filter distribution program. To date, over 38,000 filters and 31,000 replacement cartridges have been distributed to residents. For more information about water filters or replacement cartridges, residents can visit www.NewarkLeadServiceLine.com. Preliminary testing results by the City, NJDEP and EPA found that over 97 percent of PUR filters issued by the City reduce lead below 10 parts per billion (ppb), which is below the EPA action level of 15 parts-per-billion. When used in combination with flushing, 99 percent of PUR filters issued by the City reduce lead below 10 ppb. The report will be finalized in the coming weeks.

“Any permanent solution to address this issue must include replacing lead services lines. I applaud the City of Newark for making it a priority to modernize its drinking water infrastructure,” said Chris Sturm, Managing Director of Policy and Water at New Jersey Future. “The City of Newark has made tremendous progress in a short period of time. Our political leaders can look to Newark as a model that municipalities across the nation facing similar challenges can learn from.”

The free event provided residents with the latest information regarding the City’s water and steps being taken to move the City forward, including progress on a first-of-its-kind program to replace 18,000 lead service lines city-wide at no cost to residents. The City of Newark recently reached a major milestone by replacing over 1,000 lead service lines for Newark residents. The City launched a volunteer door-to-door effort to reach more residents and sign them up for lead service lines.

“Research shows that lead-based paint in homes built before 1978 remains the largest contributor to elevated blood lead levels in children. If residents are concerned, they should reach out to their child’s health care provider about blood lead testing,” said Shereef Elnahal, President and CEO, University Hospital. “Lead service lines pose a particular risk to powder formula-fed infants if tap water is used, and may also pose a risk to children under the age of 6 and women who are pregnant. I commend the City of Newark for addressing the lead service line exposure risk definitively by replacing every lead service line across the city—and at no cost to residents.”

At NJPAC’s Chambers Plaza, the City hosted a health fair about the health, education and safety of residents. Representatives from the water filter manufacturer PUR were on hand to show residents how to install filters and replace filter cartridges. Team members from the Newark Department of Water & Sewer Utilities distributed free water filters and replacement cartridges to residents. In addition, the Newark Department of Health & Community Wellness’ mobile van was onsite to perform free lead testing, and residents were able to sign up to volunteer to go door-to-door encouraging neighbors to get their lead service line replaced. Experienced volunteers were also available to train to train new volunteers.

“The City of Newark is out in the community every day, making progress for our residents. We are replacing lead service lines, testing water for residents, and providing free blood tests for children under the age of 6. To date, more than 1,000 lead service lines have been replaced and over 38,000 water filters and 31,000 replacement cartridges have been distributed,” said Acting Director of Water & Sewer Utilities Kareem Adeem. “We encourage residents to take advantage of all the resources that are available to them by signing up to have their lead service line replaced and installing one of our free water filters and replacement cartridges.”

The event was livestreamed on News12, NWK TV, as well as the City of Newark’s Facebook page. It is available to view here: <https://www.facebook.com/CityofNewark/>.

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Senators urge 'conditional' state approval of gas pipeline

By Mark Harrington

October 2, 2019

Six Long Island Democratic state senators on Wednesday urged the state's top environmental official to approve a contested natural gas pipeline "on an emergency basis" if certain conditions are met, just days after Gov. Andrew M. Cuomo publicly expressed his opposition to it.

The lawmakers, led by Sen. Todd Kaminisky (D-Long Beach), who chairs the Senate's environmental conservation committee, argued in a letter to the state Department of Environmental Conservation that that a moratorium enacted by the pipeline's chief backer, National Grid, has "already impacted thousands of our constituents."

Kaminsky declined to comment beyond the senators' letter, which was also signed by Long Island State Sens. John Brooks, James Gaughran, Anna Kaplan, Monica Martinez and Kevin Thomas.

The request to DEC Commissioner Basil Seggos asks for "conditional" approval of the pipeline, which the DEC has twice rejected on environmental grounds.

The senators said the pipeline should be approved only after an independent body — "not National Grid" — finds that the additional gas supply is truly needed to meet the state's energy safety and reliability needs. They also asked that the amount of gas allowed from the pipeline be "scaled back" to align with "the increased availability of cleaner, renewable alternatives over time," and that proceeds from the pipeline's use be used for renewable investments to more quickly meet the state's green-energy goals.

Nation Grid spokeswoman Karen Young, in a statement, said the company believes the pipeline "is vital and necessary to provide consumers with access to natural gas supplies," which it called the "most cost-effective and environmentally sound heating option available to heat homes and run businesses."

Young also said the company continues to work with the Public Service Commission in its investigation on "customer connection issues and the need for the additional gas supply to serve the needs of new and existing customers."

National Grid has argued it needs the \$1 billion pipeline to head off a looming natural gas shortage but opponents, chiefly in the environmental community, say the crisis has been largely made up so the company can guarantee a long-term fossil fuel future.

Cuomo, speaking on the Brian Lehrer radio program last month, took a stand against the pipeline, and has ordered a stepped-up investigation into National Grid's claims of a shortage and its denial of service to certain customers.

"We have taken a position: We're against the pipeline," Cuomo told the radio host. "That's our position. DEC has considered it, and they are resubmitting additional information. But there's no negotiation. If they're extorting people, and wrongfully turning off gas service to homes to create political pressure, I'm not negotiating over that. That's extortion. That's a crime."

A spokesperson for Cuomo, in a statement released after the senators' letter was circulated, noted that a decision on the pipeline's state permit is "pending with DEC, which has made clear through its previous denial that it will not compromise on our water quality standards."

Further, Cuomo's spokesperson said, "National Grid is going to be held accountable by the PSC if it finds they inappropriately denied service to their existing customers."

State Senate Republican leader John Flanagan was quick to pounce on his Democratic rivals' plan. "Today, months after their leadership was sorely needed on the Williams pipeline project, these Long Island Democrats finally say it should be approved on an 'emergency basis,' whatever that means," Flanagan said in a statement.

He accused the Democrats of remaining "silent during the entire application process, threatening billions of dollars of investment," and concluded their policies "are only going to make things worse."

A spokesperson for the DEC didn't immediately comment.

Kim Fraczek, director of the Sane Energy Project, an activist group that opposes the pipeline, criticized the senators' stance, and expressed shock that Kaminsky signed the letter.

"This is not aligned with how Kaminsky presents himself as a climate champion," Fraczek said. "I don't think rolling over for a corporation so they can get their way is the way to show that we are ready to move to a renewable economy that's rooted in justice and getting his constituents better jobs."

The senators aren't the only local Democrats calling for the pipeline. Their letter follows by several days a joint opinion piece by Suffolk County Executive Steve Bellone and Nassau County Executive Laura Curran expressing support for the pipeline. "The two of us believe strongly that without access to natural gas, there will be significant disruption for both the economy and the environment," they wrote in support of the pipeline in a opinion piece in the Daily News. "The Williams pipeline will help us ensure that the historic progress we are making is not halted."

Even while asking for approval of the pipeline on an emergency basis, the senators' letter pointed to the legislature's recent approval of legislation that requires all electric generation in the state to be carbon-free by 2040. The law "sets hard caps on greenhouse gas emissions, effectively eliminating the long-term reliance on fossil fuels, including natural gas."

But, they noted, their constituents in the near term "continue to need natural gas as a cleaner transition energy sources." Many have "had their lives disrupted."

One of them is Sean Pryor, who recently bought a home in Amityville, only to discover the natural gas was turned off. National Grid, after initially indicating it would restore service, ultimately declined, citing the moratorium, Pryor said. He faces a winter without gas heat and finding an expensive alternative such as propane or electric.

"I have a bunch of bad options," for heat this winter and "I don't know if I'm ever going to get gas," Pryor said, adding that he's filed a complaint against National Grid with the state Department of Public Service. "We're just a bunch of pawns."

Mark Harrington, an 18-year Newsday veteran, covers energy, wineries, Indian affairs and fisheries.

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NEWSDAY

[Long Island lawmakers to propose tougher anti-dumping rules](#)

By Robert Brodsky

October 2, 2019

Long Island state lawmakers introduced sweeping legislation Wednesday that would make it easier to prosecute and punish individuals suspected of illegally dumping hazardous and toxic materials while better protecting the region's sole-source aquifer.

The bipartisan legislation would create a host of new laws to target the illegal disposal, possession and acceptance of solid waste and hazardous materials while addressing gaps in existing statutes that lawmakers say failed to protect the public and environment.

Long Island, and particularly low-income Suffolk communities, has been ground zero for illegal dumping in recent years, largely fueled by its proximity to New York City's booming construction industry, according to Suffolk County District Attorney Timothy Sini.

"With our proximity to the city, Suffolk County all too often has become a dumping ground for construction and demolition projects in the city," Sini said at a news conference in Hauppauge. "It is expensive to properly dispose of solid

waste, particularly when it includes hazardous or acutely hazardous materials ... And so bad actors, in order to line their pockets with money, will break the law."

The legislation stems from a 55-page report, unsealed last week, by a special Suffolk grand jury that was empaneled in July 2018 to investigate illegal dumping and other environmental crimes on Long Island.

The grand jury's findings were born out of "Operation Pay Dirt." The joint investigation by Sini's office and the state Department of Environmental Conservation led to a 130-count indictment — the largest bust in the state's history for the illegal dumping of construction and demolition debris — with prosecutors charging nine corporations and 30 individuals with illegally disposing of contaminated waste at 24 sites in Nassau and Suffolk. Every defendant charged in the case, Sini said, has since pleaded guilty.

"This is an issue that strikes at what being a Long Islander is all about," said Suffolk County Executive Steve Bellone. "Our environment is why we live here. It's part of who we are."

The grand jury report suggested a number of legislative and regulatory changes — many of which were included in the bill by State Senate and Assembly lawmakers.

The proposed legislation would create a host of new felony and misdemeanor environmental waste crimes. Lawmakers, prosecutors and environmental advocates said there are few laws on the books to specifically address damage to Long Island's groundwater or that target the dumping of hazardous substances.

For example, the new charge of aggravated criminal disposal of solid waste and hazardous substances would be a Class B felony and punishable by 8 1/3 to 25 years in prison with a minimum of 1 to 3 years behind bars.

Previously, prosecutors were left to charge illegal dumping suspects with a top charge of second-degree criminal mischief — a class D felony often used to charge those writing graffiti. The result, Sini said, was that companies or "dirt brokers" were allowed to pay a fine but generally avoid lengthy prison time.

"Illegal polluters may not steal our money but they do rob us of our health," said Adrienne Esposito, executive director of the Citizens Campaign for the Environment, a Farmingdale-based advocacy group. "And that's a crime and needs to be treated as such."

The legislation includes a conspiracy component, allowing prosecutors to charge suspects with scheming to defraud, and targets the lucrative business of mining for sand from beneath the ground's surface. Criminal penalties would be heightened when the illegally dumped materials cause the aquifer to become contaminated.

Existing laws would be strengthened to require "cradle-to-grave" documentation of solid waste, construction and demolition material in an electronic database that investigators could track via a smartphone application. And asset forfeiture funds could be distributed to the victims of environmental crimes.

State lawmakers contend that illegal dumping has historically effected low-income neighborhoods and communities of color.

In Suffolk, illegal dump sites containing lead, pesticides, asbestos, diesel fuel and other hazardous substances have been discovered in Roberto Clemente Park in Brentwood and next to community soccer fields near Brentwood North Middle School.

"The communities that are being impacted by this are underserved communities," said State Sen. Todd Kaminsky (D-Long Beach), the bill's lead sponsor. "People are not going to fancy areas in Suffolk County and dumping in their parks and on their lawns."

Lawmakers from both parties and across both Nassau and Suffolk urged passage of the bill when the Senate and Assembly return to session in January.

"We already have bipartisan support," said Sen. Phil Boyle (R-Bay Shore), the ranking minority member on the Environmental Conservation Committee. "This bill should come to the floor soon in the new session and pass unanimously."

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CLIMATEWIRE

Ocean City, nearby shores to get \$32.5M widening

October 2, 2019

Three southern New Jersey beaches will be widened under a new contract.

The Army Corps of Engineers announced yesterday that it has hired Great Lakes Dredge & Dock Co. of Oak Brook, Ill., to carry out periodic beach replenishment and project maintenance at the Ocean City, Sea Isle City and Strathmere beaches.

Most of the work involves widening the beach. But in some spots, dunes, beach access points and sand fencing will be repaired.

The contract also calls for the placement of additional sand in spots where it may be deemed necessary after a survey of the beaches.

That work could push the total cost as high as \$41.3 million. — Associated Press

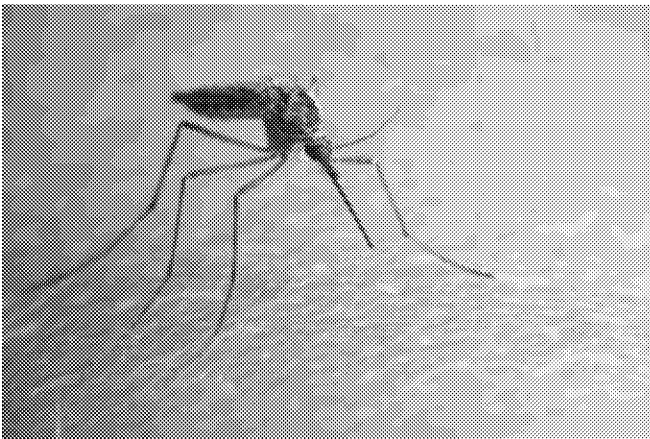
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NJ ADVANCE MEIDA

6 N.J. towns to be sprayed to combat potentially-deadly mosquito-borne illness

By Jeff Goldman

October 2, 2019



Portions of six towns in Union County are set to be sprayed by helicopter after a person and several animals contracted Eastern Equine Encephalitis, a potentially deadly mosquito-borne illnesses.

Although the Federal Aviation Administration must give final approval before the flight begins, people and pets in Mountainside, New Providence, Berkeley Heights, Summit, Scotch Plains, Springfield should remain inside between 7 p.m. and 10 p.m. on Wednesday.

A county spokesman cautioned at 11:30 a.m. that a final decision on whether a Department of Environmental Protection contracted helicopter flight will take place this evening has not yet been made. The FAA is likely to make the call by about 5 p.m depending on weather conditions - notably temperature and wind.

Last month, two more people - one in Union County and one in Atlantic County - contracted the Eastern equine encephalitis, bringing the total number of cases in the state to three, state health officials said. In addition, at least eight horses died as of early September after contracting the virus.

EEE is among the most serious mosquito-transmitted diseases in the U.S., killing around one-third of patients who contract it and often leaving survivors with significant brain damage.

A member of the non-ester pyrethroid chemical family, the adulticide spray, Zenivex Estofenprox is safe for humans and pets. Still, sporting events and other activities will be canceled beginning at 7 p.m. due to residents' concerns, Berkeley Heights officials said.

All five mosquito pools in Berkeley Heights most recently tested negative for EEE. However, earlier last month, the Union County Bureau of Mosquito Control found that a mosquito pool in the Emerson Lane area near the Warren border tested positive for EEE. Since then, the county has aggressively sprayed the most mosquito-prone areas in Berkeley Heights, as well as the areas around the original positive test pool. Somerset County has been doing the same on its side of the border.

A vaccine exists for horses but there is no vaccine for people, state health officials said. The only way to protect yourself is by taking measures to prevent mosquito bites such as limiting time outside between dusk and dawn, wearing long-sleeved or light colored clothing and using mosquito repellent.

While most people infected with EEE will show no signs of illness, some will. In severe cases, the disease — which can cause inflammation of the brain — starts with a sudden headache, high fever, chills and vomiting four to 10 days following a mosquito bite, state health officials said.

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GREENWIRE

[DRINKING WATER: N.J. tallies 160K lead pipes in homes, businesses](#)

October 2, 2019

New Jersey's first attempt to put together a comprehensive inventory of the type of lead pipes that caused a drinking water crisis in the state's biggest city is underway and so far has counted around 160,000 of the potentially toxic pipes at homes and businesses across the state, according to public records.

That figure is likely to climb as more data comes in. The data collected by the Department of Environmental Protection includes a mix of complete and partial results from about three-quarters of the state's nearly 600 water systems. A 2016 American Water Works Association survey estimated that twice as many of New Jersey's homes and businesses get water through lead service lines.

The state began the inventory in January, but the effort took on new urgency after residents in part of Newark were advised to stop drinking their tap water because of concerns about lead poisoning.

Millions of Americans get their drinking water through old lead pipes, but experts say any danger from those lines can be reduced or eliminated by treating the water with anti-corrosion agents.

In Newark, that treatment stopped working, and EPA raised concerns this year that filters given to residents were also failing to properly remove lead. Since then, the city has said tests have shown 99% of the filters working properly and it has begun a \$120 million project to replace lead pipes.

A handful of other states have begun either voluntary or required lead pipe inventories in the wake of similar lead crises in Flint, Mich., and Washington, D.C.

Only five states require inventories or maps of their locations, according to the Association of State Drinking Water Administrators. A handful of other states have set up voluntary reporting.

"It is an important step in better understanding the scope of the challenge and in setting priorities," said Tom Neltner, the chemicals policy director at the Environmental Defense Fund.

Neltner also called on the state to publish its inventory and identify the systems that haven't responded so far. The Associated Press obtained the information in response to a request made through the state's Open Public Records Act.

New Jersey doesn't have a plan to replace all its lead pipes. There's a consensus that the top hurdle is cost, which the state has said could top \$2 billion.

Department of Environmental Protection Associate Commissioner Kati Angarone said in a statement that flushing pipes after water has sat for hours can reduce lead exposure significantly.

She added that chemicals to control the corrosion of lead in pipes are used across the state and have been a "effective means" of preventing lead from leaching into drinking water.

That's not sufficient action, said Jeff Tittel, the director of the state's Sierra Club.

"It's 20 years overdue, probably more like 30 years overdue," Tittel said. "The big question is, what does DEP do about it?"

Newark is replacing roughly 18,000 lead service lines. Michigan is replacing its 500,000 lead service lines.

New Jersey lawmakers have begun holding hearings on the issue. During recent public testimony, Democratic state Sen. Brian Stack sounded frustrated and called on his colleagues to come up with a solution to the problem.

"I think we really need to take the bull by the horns," Stack said. "The fact that we're still taking about lead pipes and lead paint in 2019 in New Jersey is a sad commentary." — Mike Catalini, Associated Press

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PRESS OF ATLANTIC CITY

[State creates oversight panel for Oyster Creek decommissioning](#)

By Michelle Brunetti

October 2, 201



A panel of state officials will assist in evaluating the decommissioning process at the former Oyster Creek nuclear plant, the head of the Department of Environmental Protection said Wednesday.

Oyster Creek permanently shut down Sept. 17, 2018, and is in the process of being dismantled and its spent fuel put into safe storage.

The Oyster Creek Advisory Panel will include Commissioner Catherine R. McCabe, who will chair the group; the superintendent of the State Police; the director of the Office of Homeland Security and Preparedness; and the president of the Board of Public Utilities, or their respective designees.

The panel will help ensure compliance with regulatory requirements "and provide assurances to the public that the proper protocols for the decommissioning are in place," Gov. Phil Murphy said in a news release.

"It's a great thing. It really shows Gov. Murphy and his administration appreciate the environmental and public safety aspects of this decommissioning," said Janet Tauro of Clean Water Action. "There are a lot of really pressing safety concerns."

Tauro said in the past her group has seen much more diligence from the state than from the federal Nuclear Regulatory Commission, which is in charge of decommissioning oversight.

"A perfect example was the tritium leaks (in past years at Oyster Creek)," Tauro said. "The NRC was not going to move on it, but the state did."

Holtec International of Camden purchased the closed plant from Exelon Generation Company in July and will handle the decommissioning process with subcontractors.

Tauro said there is great potential for conflicts of interest at Oyster Creek, since the company that owns it and controls the \$2 billion decommissioning fund is also the company that makes the casks that will be used for spent fuel storage, and that has a New Mexico facility to which it wants to move the spent fuel.

"This panel provides another important avenue for enabling the public to participate in the decommissioning process, to ask key questions and to share their concerns," said McCabe. "We look forward to working with our sister agencies on this significant responsibility."

The panel will meet at least twice per year and will provide specifics of how the public can participate.

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Press of Atlantic city

[Mosquito spraying tonight in Hammonton, Northfield, Pleasantville](#)

By Michelle Bruncetti

October 2, 2019)



The Atlantic County Office of Mosquito Control will be doing aerial sprays against mosquitos in portions of Hammonton, Northfield and Pleasantville between 5 p.m. and 7 p.m. Wednesday, weather permitting.